<u>Overview of Farm and Ranch Leases</u>

National Agricultural Law Center

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I. GENERAL CONSIDERATIONS

A. <u>Oral vs. Written Leases</u>

1. ***What is being done***

    a. The agriculture industry tends to be a conservative "handshake" culture with many oral agreements.

    b. In a K-State study, about one-half of farm and ranch leases (in Kansas) were in writing while the other half were oral agreements. <u>See</u> Llewelyn et al., "Learning from Lease Workshop Participants: Results of In-Session Audience Responses," Kansas State University Lease Workshops (2011, 2012, and 2013) at 4 <u>available at</u> http://www.agmanager.info/farmmgt/land/lease/papers/Lease_Questions_Summary.pdf (last visited February 25, 2014).

2. ***Advantages***

    a. Provides for a guide for the heirs of the operator or landlord

        i. <u>Note</u>: Farm/ranch leases typically terminated upon the death of the tenant

    b. Helps facilitate a conversation between the landlord and tenant

    c. More likely that the parties have read and understood the terms of the agreement

    d. Will preserve the specific date/provisions for renewal

    e. Clarifies termination procedures

    f. Helps to clear up tax issues

i. The type of lease you choose may affect tax liabilities

ii. <u>Examples</u>:

1) income tax
2) self-employment tax
3) qualifying for special use valuation for estate tax

g. In most states, the Statute of Frauds requires farm/ranch leases concerning property to be in writing if 1 year or more.

i. Oral leases are presumed to be year-to-year (default). In these cases, look at the law in your state for the termination and renewal rules.

h. If the lease contains a profit share, then the lease shall provide the landlord proof of his/her share.

i. Most importantly, it is a written record of the agreement that can be referred back to if a dispute arises.

3. ***Client Concerns with Having Farm Leases***

a. Attorneys' fees

i. <u>Practitioner's Note</u>:

1) Clients prefer a flat fee for typical farm or ranch lease transactions. <u>See</u> Cari Rincker, "Strategies for Developing and Retaining Farms and Agri-Business Clients," Fifth Annual Ohio Agricultural Symposium (June 23, 2013) presentation <u>available at</u> http://www.slideshare.net/rinckerlaw/stategies-for-developing-and-retaining-ag-clients (last visited March 11, 2014) <u>and</u> "Survey Says: What Farmers and Agri-Businesses Have to Say About Agriculture Lawyers," at 4-5 (June 28, 2013) <u>at</u> http://www.jdsupra.com/legalnews/survey-says-what-farmers-and-agri-busi-19720/ (last visited October 28, 2013).

2) Farm/ranch/livestock leases are a nice opportunity for agriculture lawyers to use flat fee billing vs. the billable hour.

b. Flexibility
    i. Some clients prefer to have a "moving agreement" that may morph and change overtime. Attorneys should stress that farm and ranch leases can be changed over time too so long as it is done in writing.

B. Picking the Right Landlord or Tenant

1. It is important for the Landlord and the Tenant to both consider what is most important to them when picking a right Landlord or Tenant.

2. It is recommended that the Landlord visit a Tenant's farm to determine whether his/her housekeeping and management skills are compatible with the LL's operation. See West Virginia University Extension Service, "The Farm Lease" at http://www.wvu.edu/~agexten/farmman/decision/farmleas.htm (last visited February 25, 2014).

C. Active v. Passive Income

1. ***Social Security***

    a. In way of background, you must have a certain number of credits under the social security system before receiving social security based eligible quarters.
    b. A farmer may have already obtained this threshold with the Social Security Administration ("SSA") as he/she nears retirement.
    c. Farmer clients should speak to their accountant.

2. ***Self Employment***

    a. According to the IRS in the "Farmer's Tax Guide", a person is self-employed if they carry on a trade or business (such as farming) in good faith to make a profit. IRS Pub 225 specifically covers "Landlord Participation in Farming" on Page 74.

    b. As stated in the publication, "income and deductions from rentals and from personal property leased with real estate are not included in determining self-employment earnings." However, income from farm rentals will be included if the **landlord materially**

participates in the production or management of agriculture production. The issue is really whether the rental income is considered active or passive income.

c. The next question is what entails "**material participation**" in this context. In order to "materially participate" in the production of agriculture, the IRS requires the landowner meet one of the following four tests:

   i. Landowner does three (3) of the following four (4) things:
      1) Pay at least 50% of the direct costs for producing the crop or livestock;
      2) Furnish at least 50% of the tools, equipment and livestock used in the production activities;
      3) Advise/consult the tenant; and or
      4) Inspect the production activities periodically;

   ii. Regularly and frequently takes part in important decision-making and management of the farm affecting the success of the operation;

   iii. Works 100 hours plus directly connected to agricultural production over period of 5 weeks or more; or

   iv. Looking at "big picture," the landowner is materially and significantly involved in the production of farm commodities.

   See also Robert Fleming, "Tax Issues for Farm Rental Agreements," The Ohio State University Extension, FR-6-02 available at http://ohioline.osu.edu/fr-fact/0006.html (last visited March 11, 2014).

D. FSA Compliance -If applicable, both the landlord and tenant should ensure that the farm lease complies with the USDA Farm Service Agency ("FSA") federal farm program regulations.

1. Cash rent tenants are entitled to all of the federal farm program payments; crop share tenants are required to share direct and counter cyclical payments with their landlord

2. If the lease does not comply with these regulations, then they may be required to repay federal farm program payments.

3. With hybrid leases, it depends on how the lease is draft on whether the farmer is actively engaged in farming

II. FARM LEASES

A. Basic Types of Farm Acreage Leases

1. ***Cash-Rent Lease***: This is where the tenant usually pays a ***fixed dollar amount*** in rent (either on a per acre or whole farm basis). These types of leases may be modified depending on ***crop yield*** (i.e., increase in good years and decrease in bad years).

    a. From the Landlord's Perspective:

    i. Advantages

    1) Less managerial input/labor
        a) Landlord does not have to plant, harvest or market the crop

    2) Less paperwork/ administrative headache

    3) Stable/predictable cash rent income

    4) Little concern over the accurate division of crop and expenses and marketing

    ii. Disadvantages

    1) Landlord is not "actively engaged in farming" for federal farm programs

    2) Income for landlord is not subject to the self-employment tax and is not considered to be earned income for the purposes of determining how social security may be modified if the farmer has previously retired.

3) More difficult to determine a cash rent acceptable to both the landlord and the tenant
    a) Challenging to determine the cash rental value of the farmland

4) Landlord may have difficulty in getting paid
    a) Check the law in your state on whether a landlord's lien is available. Some states require the filing of a UCC-1 form.
    b) The National Agriculture Law Center has a resource for information on liens available in each state.

5) Not able to receive direct and counter-cyclical program payments from the USDA Farm Service Agency. See Alan Miller, "Cropland Leasing Update: Farm Service Agency Direct and Counter-Cyclical Program Payments and Flexible Cash Lease Arrangements", Purdue University, available at http://www.agecon.purdue.edu/extension/pubs/Farmland_values_files/DCP_Payments_Flexible_Cash_Leases.pdf (last visited March 11, 2014).

b. From the Tenant's Perspective:

i. *Advantages*

1) The landlord is not as involved in crop production giving the tenant more autonomy. In other words, the tenant has decision-making authority over the farm, including marketing.
    a) Tenant has autonomy in crop production, marketing, and participation in federal farm programs

2) If there is a good harvest, the tenant is not required to divide the proceeds with the landlord.

3) He/she has less capital tied-up than they would have if they owned the land.

4) Able to receive direct and counter-cyclical program payments from FSA. See Alan Miller, "Cropland Leasing Update: Farm Service Agency Direct and Counter-Cyclical Program Payments and Flexible Cash Lease Arrangements", Purdue University, available at http://www.agecon.purdue.edu/extension/pubs/Farmland_values_files/DCP_Payments_Flexible_Cash_Leases.pdf (last visited March 11, 2014).

ii. *Disadvantages*

1) The tenant has increased risk with commodity price fluctuations

2) Increased risk with short-term leases
   a) Capital investments in the property / improvements to the land

3) If the landlord terminates the lease, then the tenant may have difficulty in finding another lease with comparable acres.

2. ***Crop-Share Lease***: In these arrangements, ***the landlord will share input costs*** (including but not limited to seed, fertilizer, fuel) while the tenant provides all of the labor and remaining input costs. Once harvested, proceeds will be divided according to the agreement (normally ranging from 25/75 to 50/50). In this scenario, the farmers both share the risk with the other person and the landlord will typically satisfy the "actively engaged in farming" requirement of federal programs.

a. From the landlord's perspective:

i. *Advantages*

1) Rental income will be subject to ***self-employment taxes*** and is considered to be earned income for the purposes of determining how social security may be modified if the farmer has previously retired.

2) Depending on how the lease is drafted, the farmer-landlord could be "actively engaged in farming" for federal farm programs. If so, the landlord should participate in management decisions.

3) Crop sales and input purchases may be timed to help with taxes.

ii. *Disadvantages*

1) Variable income is a disadvantage – accounting should be maintained by the tenant.

b. <u>From the tenant's perspective</u>:

i. Advantages

1) Less operating monies are tied up by the tenant because the landlord shares some production costs

2) Management is shared between an (oftentimes) experienced landlord and (oftentimes) less-experienced tenant

3) Crop sales and input purchases may be timed to help with taxes

4) Sharing risk of low yield and prices with the landlord

ii. Disadvantages

1) He/she loses autonomy because the landlord is involved in the decisions of the operation.

2) Sharing profits from the good years

c. <u>Livestock-Share Leases</u>: Most view livestock-share leases as a type of crop-share lease. The landlord may own portion of the livestock animals and typically shares the burden of input costs, such as feed.

3. ***Hybrid Leases***: In this type of lease, ***the landlord will receive a minimum fixed rent payment*** while sharing in some of the profits, losses, and decision-making. In this lease, the rent is based on a formula that takes into account "actual yields" and "actual selling prices" available to the tenant during the crop year.

a. Variable Cash Rent Agreement. Cash rents may be flexed for changes in:

   i. crop price and/or yields
   ii. flexing rent on changes in costs of inputs

b. From the landlord's perspective:

   i. Advantages

      1) Depending on how the agreement is drafted and the responsibilities of the landlord:
         a) Rental income may be subject to self-employment taxes and is considered to be earned income for the purposes of determining how social security may be modified if the farmer has previously retired.
         b) The farmer-landlord could be "actively engaged in farming" for federal farm programs.

      2) Allows the farmer-landowner to share in the benefit of above-normal yields

   ii. *Disadvantages*

      1) If the lease isn't properly drafted, then the LL isn't "actively engaged in farming"
      2) Somewhat variable income

c. From the tenant's perspective:

   i. Advantages

      1) Reduces financial risk
      2) Reduces required labor

   ii. Disadvantages
      1) Less autonomy than cash rent

d. FSA Compliance: If applicable, both the landlord and tenant should ensure that the hybrid farm lease complies with the USDA Farm Service Agency ("FSA") federal farm program regulations.
    i. Federal farm program payments must be allocated in the same ratio as the crop is divided.
    ii. If the lease does not comply with these regulations, then they may be required to repay federal farm program payments.

B. Key Farm Lease Provisions

1. ***Parties***: Ensure that all intended parties to the lease are named and adequately identified by the inclusion of their addresses or other unique identifying information.

    a. Agriculture operations oftentimes do business under an assumed name (i.e., a D/B/A or "doing business as" another entity). It is important to obtain the legal name of the landlord or tenant (e.g., Curt and Pam Rincker d/b/a Rincker Simmentals).
    b. The parties should be identified as the Landlord/Tenant or Lessor/Lessee.

2. ***Purpose***: It is recommended that farm leases note the purpose of the lease (e.g., corn production, organic cattle production, agri-tourism).

3. ***Property Description***: Ensure an accurate description of the leased ground is included. This should include a list of buildings and structures the tenant has access to.

    a. Legal Description: It is preferred to include a legal description of the property.

    b. FSA Farm Number: Some farm leases include the USDA Farm Service Agency ("FSA") farm number instead of the legal description of the property.

4. ***Lease Term***:

    a. The length of the lease term should be clearly stated.

        i. In some states, longer leases need to be recorded. Under New York law, a real estate lease can be for as long as the parties wish; however, if the terms are longer than three (3) years then the lease must be recorded, just like a deed or a mortgage would in the property records office. Check the law on this issue in your state.

ii. Some states have a maximum length of a farm lease. For example, farm leases in Iowa cannot be longer than 20 years.

b. It is usually advantageous for the tenant to negotiate a longer lease. If there is no written lease, then the lease will be inferred to be a year-to-year lease.

c. It should be clear what the beginning and ending dating is of the term.

d. In a study performed by K-State University, the length of the leases were as follows:
   i. 1 year – 27%
   ii. 2 years – 3%
   iii. 3 years – 21%
   iv. 4 years or longer – 32%
      1) 5 years – 10%
      2) Other – 22%

   See Llewelyn et al., "Learning from Lease Workshop Participants: Results of In-Session Audience Responses," Kansas State University Lease Workshops (2011, 2012, and 2013) at 4 available at http://www.agmanager.info/farmmgt/land/lease/papers/Lease_Questions_Summary.pdf (last visited February 25, 2014).

5. ***Renewal Terms***: Include provisions allowing for any renewal of the lease and for notice of intent to renew (or not renew). A good farm property lease should also establish agreed-upon compensation for any fall fieldwork completion, in the event of nonrenewal of the lease.

6. ***Lease Price & Payment Terms***:

   a. Whether your agreement involves crop sharing, fixed-cash, flex-cash, or some other arrangement, your lease price should be spelled out in writing.

   b. Payment terms should be memorialized (including when payment is due, where it should be sent, and how/method rent can be paid).

    i. In a K-State study, 53% of survey takers had multiple rent payments taking place annually. Meanwhile 15% had rent due at harvest while 15% had it due January 1. 10% paid/received rent on December 31. Only 3% had rent taking place at the time of planning. See Llewelyn et al., "Learning from Lease Workshop Participants: Results of In-Session Audience Responses," Kansas State University Lease Workshops (2011, 2012, and 2013) available at http://www.agmanager.info/farmmgt/land/lease/papers/Lease_Questions_Summary.pdf (last visited February 25, 2014).

  c. The lease should clearly state who is responsible for property taxes, farm insurance, and utilities.
  d. What is the penalty for late payment?

7. ***Reimbursement of Expenses:*** In some leases, the tenant may seek reimbursement for crop nutrients (e.g., lime), the cost of improvements or other operational expenses.

8. ***Duties and Prohibitions***: The lease should clearly state the duties and prohibitions of both the landlord and the tenant in the farm lease.

  a. Desired/prohibited farming practices (e.g., use of certain chemicals)

  b. Maintenance of farm buildings/fences

  c. Controlling noxious weeds
    i. Check the law in your state. In some states, the landlord has the duty to eradicate certain noxious weeds.

  d. Making improvements on the real property, buildings or fixtures including renewable energy improvements (e.g., solar, wind)

  e. Soil-conservation practices

  f. Nature of landlord's participation in the management of the farm (potential tax implications)

  g. Prohibition against agri-tourism/agri-tainment, on-farm direct marketing (e.g., farmstands), on-farm poultry slaughter

h. Crop-Share - This section is especially important in crop-share leases where each party has specific responsibilities. Here are some examples:

  i. Record-keeping requirements and how will this information be shared and/or kept confidential
  ii. Storage/delivery of landlord's share of crops
  iii. Sharing of operational expenses. Usually, variable expenses are shared in the same percentage as the crop share.
  iv. Compensation upon termination of the lease.

i. Example Checklist

1) Plowing of ground
2) Hunting by tenant/guest
3) Fishing by tenant/guest
4) Cutting of posts for use on the farm
5) Cutting of firewood
6) Cutting of timber
7) Maximum number of animal units (number of head)
8) Restricted-use pesticides
9) Maintain chemical use records
10) Use of sewage sludge
11) Temporary fencing
12) Temporary structures
13) Required to file with assessor for farm use
14) Required to pay taxes on his possessions
15) Required to maintain fences
16) Required to control brush
17) Required to reseed plowed fields
18) Required to make minor repairs

See West Virginia University Extension Service, "The Farm Lease" at http://www.wvu.edu/~agexten/farmman/decision/farmleas.htm (last visited February 25, 2014).

9. ***Rights to Natural Resources***: The lease should state whether the tenant or landlord will retain rights to natural resources on the property including, but not limited to: wind rights, solar rights, mineral rights, timber rights, fishing rights and/or hunting rights. It might be appropriate to also describe recreational rights such as camping.

10. ***Access***: The lease should cover access to the farm via driveways or easements.

11. ***Insurance:*** Should the landlord or tenant be required to have insurance? If so, how much (and what type) of liability protection is needed?

    a. What Type(s) of Insurance?
        i. Comprehensive Farmowners' Liability Policy
        ii. Commercial Insurance
        iii. Renters Insurance (for farmstead)
        iv. Livestock Insurance
        v. Product Liability Insurance

    b. What policy limit?

12. ***FSA Farm Program Payments****:* As noted above, depending on the type of lease, Farm Service Agency ("FSA") federal farm program payments should be addressed. It should be identified whether the landlord or tenant will participate in federal farm programs, such as Conservation Reserve Program ("CRP") Payments, Conservation Security Program ("CSP") Payments, or other federal farm programs. In those cases, the lease should describe who will be receiving the federal farm payments.

13. ***Improvements:*** Improvements should be addressed in most farm leases, including the rate of depreciation for the tenant's improvement.

    a. Right to make improvement on the real property, buildings, and/or fixtures and the right to be compensated for same.

    b. Importantly, renewable energy or mineral rights should be recognized in the lease. Typically, the landlord reserves the right to these natural resources.

    c. Whether the tenant has the right to utilize improvements made by the landlords should be discussed.

    d. If improvements are allowed, then also discuss the removal of fixtures

    e. Examples:
        i. Farm structures/buildings
        ii. Limestone
        iii. Fertilizer

14. ***Reporting Requirements***: You should also discuss and include any reporting requirements, such as what must be reported, along with when and how the tenant must make those reports. For example, does the tenant have to provide ***grid sampling***, ***yield monitor data***, ***weigh wagon*** results or ***test plot*** results to the landowner? Can the landowner ask the cooperative how many bushels of grain were delivered?

15. ***Fertilizer:*** In most farm leases, the issue of fertilizer should be addressed somehow. Most crop leases stipulate that the same amounts of fertilizer and lime be applied annually. Some leases state that soil tests should be performed to ensure for proper fertility levels (e.g., flight map/farm plan map with matching soil tests in each filed).

16. ***Environmental Compliance/Conservation***: In some cases, soil conservation provisions should be included in the farm lease. The drafter may also wish to include a statement regarding the existing environmental status of the property and responsibility to minimize certain activities that may cause environmental contamination.

17. ***Default***: Your lease may include a list of actions that count as defaults in the terms of the lease, specifying whether part or all of the listed defaults can be cured or waived by the other party.

18. ***Ability to Assign or Sublease***: The lease should state whether (or under what conditions) the tenant can assign or sublease its obligation to another farmer.

19. ***Notice***: Include notice provisions, to specify how and when to give notice of default, notice of intent to terminate the lease, or any other notice needed to make the terms of the lease work.

20. ***Termination***: The lease should include procedures for terminating the lease, either voluntarily or involuntarily (for example, in case of a default). The lease should include requirements for the Notice of Termination. It should also note any reimbursement or crop nutrients, lime and/or completed fieldwork upon the termination of the lease. These provisions should also include the tenant's right if the property is transferred or condemned during the lease period and reimbursement provisions for a crop still in the ground when the lease is terminated. Make sure that the notice provisions comply with any state law requirements concerning notice with farm leases.

See generally University of Nebraska-Lincoln Extension, "Farm Lease Termination," Cornhusker Economics (February 27, 2008) available at http://agecon.unl.edu/c/document_library/get_file?uuid=f658d1a0-c6ad-4a3e-b883-fb7467d754da&groupId=2369805&.pdf (last visited February 25, 2014).

21. ***Landlord Rights**:* The lease should discuss the landlord's right to enter the property for narrowly defined purposes. This typically includes the right to make a reasonable inspection, make repairs and/or installations, show the premises to prospective buyers, collect rent, and deliver a notice to terminate the tenancy. The lease might also note the landlord's right to a security interest in the crops/livestock, other another means of securing payment.

22. ***Good Management Practices**:* Depending on the type of operation, the parties may wish to enumerate good management practices ("GMPs") such as animal husbandry/handling/feeding/nutrition or farming techniques.

23. ***Right-to-Farm**:* Most states have their own right-to-farm law. For example, in New York, if the land is in an agricultural district and the farmer is performing "sound agricultural practices" (akin to GMP's) then nuisance suits are barred. The lease might require the tenant to use said "sound agricultural practices", which are usually not clearly defined. In New York, the New York Department of Agriculture & Markets makes the determination on what is and what is not considered a "sound agricultural practice" and it may consult with the USDA and/or Cornell Cooperative Extension. Minimally, the lease should recognized that certain parcels of the land are in agriculture districts subject to the right-to-farm law.

24. ***Confidentiality***

    a. Think about having a confidentiality clause if the parties have not signed a Non-Disclosure Agreement. See Cari Rincker, "Maintaining Confidentiality for Your Farm or Agri-Business with Non-Disclosure Agreements," available at http://www.jdsupra.com/legalnews/maintaining-confidentiality-for-your-far-42640/ (last visited March 11, 2014).

25. ***Miscellaneous Provisions***:

   a. Indemnification Clauses - requiring the tenant to pay any damages that are assessed against the landlord

   b. Severability Clause

   c. Choice of Law-Which state law applies?

   d. Choice of Forum- What court will disputes be dealt with (state law court)?

   e. Alternative Dispute Resolution – Can include stages for negotiation, non-binding mediation, and non-binding/binding arbitration. Litigation should be allowed if there is an emergency. Keep in mind that some states have an agriculture mediation program (e.g., New York Agriculture Mediation Program).

   f. No Joint Venture - In many cases, it is beneficial for the lease to state that the landlord and tenant are not in a partnership or joint venture. It should also note that neither party will obligate the other party for debts/liabilities or damage of the other party.

26. ***Signature Block**:* Perhaps the most obvious component is the signature block; however, it is recommended that the parties also sign before a notary public.

C. Farmhouse

1. Should have a separate lease for residential property.

2. Does the farm lease cover the farmhouse or residential living building? Drafter might consider having a separate lease for the farmhouse/farmstead.

D. Termination of a Farm Lease

1. Some states use specific forms for farm lease termination.

2. Check the notice requirements in your state for the termination of a lease.

3. Will the lease terminate upon the death of either party?

a. If either the LL or T dies while the farm or ranch lease is in effect, the deceased's estate executor or administrator is required to comply with the terms of the lease.

b. However, if the landlord only has a life-estate in the land, then the lease will terminate upon his/her death.

E. Liability for Tenant Activities

1. When is a landowner legally liable for harm that is caused to others by a tenant's activity on leased farmland? For example, a tenant who spreads manure or pesticides on the property might create a nuisance that affects a neighbor, who then wants to sue you because you have more assets or better insurance against which to collect. Will you have to pay? What can you do to protect yourself from liability?

2. The general principle is that everyone who creates a nuisance or participates in maintaining the nuisance is liable. This means that landowners cannot avoid liability simply by leasing their land to tenants – what matters is whether the landowner knew about how the tenant was likely to use the property when the lease was signed or renewed.

3. ***Practical Pointer***: Review leases with an eye towards seeking indemnification and hold harmless agreements from any tenant who accepts manure under a manure-management plan or manure-easement arrangement, because you face at least the potential for legal liability to third parties for any nuisance created, when a tenant uses manure as part of the operation.

F. Getting a Fair Price

1. ***Background***

a. Farmland rental prices increased sharply in 2011 and 2012 with a moderate increase in 2013. See Erin Herbold-Swalwell, "Legal Must-Know for Farm Lease Negotiations" at 2 National Business Institute webinar on "Farm Leases" (August 2013).

b. Whether you represent the landlord or tenant, it helpful to know the market rate in your area. Additionally, if the farm is set-up in two different business entities with one entity owning the real property and the other entity owning the livestock, crops and farm equipment, an arm's length farm lease should be used between the entities.

2. ***Picking a Fair Price***

   a. Each side must be compensated appropriately.

   b. Some believe that the tenant has the most informational power when deciding on the rental price because landlords tend to be more out of touch with current market trends. See Kastens and Dhuyvetter, "Ethics of Renting Agricultural Land," available at http://www.agmanager.info/farmmgt/land/lease/papers/RentalEthics(Sep2006).pdf (September 2006) (last visited February 25, 2014)

   c. However, in a K-State study, most farmers and ranchers believed that the landowner had more power. See Llewelyn et al., "Learning from Lease Workshop Participants: Results of In-Session Audience Responses," Kansas State University Lease Workshops (2011, 2012, and 2013) available at http://www.agmanager.info/farmmgt/land/lease/papers/Lease_Questions_Summary.pdf (last visited February 25, 2014).

   d. Many landlords do not ask for proper rent increases oftentimes because they are afraid to do so. When representing a landlord, do not be afraid to ask for reasonable rent increases indexed for inflation or reasonable market trends. In the same K-State study, cited above, 23% of survey-takers renegotiated the lease annually and 22% renegotiated every other year. 40% said that rent was renegotiated every 3-5 years. 15% survey takers would go more than 6 years without renegotiating the lease. See Llewelyn et al., "Learning from Lease Workshop Participants: Results of In-Session Audience Responses," Kansas State University Lease Workshops (2011, 2012, and 2013) available at http://www.agmanager.info/farmmgt/land/lease/papers/Lease_Questions_Summary.pdf (last visited February 25, 2014).

3. ***Factors Involved in Rent Determination:***

   a. Production Contribution the Farm can make to the Tenant's Operation.

i. Is the farm productive?
ii. Are the improvements efficient to his operation?
iii. Is there adequate water?
iv. Are the fences in good shape?

b. Cash Value of the Farm.
   i. Does the lease reflect the market value of the farm?

c. Comparable Farm Leases in the Area.
   i. This will require some investigation/ research.

See West Virginia University Extension Service, "The Farm Lease" at http://www.wvu.edu/~agexten/farmman/decision/farmleas.htm (last visited February 25, 2014).

4. ***Where Can You Find the Market Rate***:

   a. Kansas – www.agmanager.info

III. OTHER TYPES OF FARM AND RANCH LEASES

A. Farm Equipment/Machinery Lease

B. Custom-Farming Agreements

C. Labor-Share Leases

D. Manure Application Agreements

E. Livestock Leases

1. ***Leases for Breeding Males***

   a. Bull Leases

   b. Stallion Leases

   c. Ram Leases

   d. Boar Leases

2. ***Show Circuit Leases***

3. ***Livestock-Share Leases***

4. ***Grazing Leases***

IV. ADDITIONAL RESOURCES

CARI B. RINCKER AND PATRICK B. DILLON, FIELD MANUAL: LEGAL GUIDE FOR NEW YORK FARMERS' AND FOOD ENTREPRENEURS (2013), available for purchase at http://www.amazon.com/Field-Manual-Legal-Farmers-Entrepreneurs/dp/1484965191 (last visited February 25, 2014).

Donald J. Breece, "Farm Rental Agreement Checklist," The Ohio State University Extension FR-0003-01 available at http://ohioline.osu.edu/fr-fact/0003.html (last visited February 25, 2014).

Don Pershing and J.H. Atkinson, "Figuring Rent for Existing Farm Buildings" Publication No. EC-451 available at http://www.extension.purdue.edu/extmedia/EC/EC-451-W.html (last visited May 19, 2013).

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