

PUTTING YOUR CASH RENT AGREEMENT IN WRITING

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Developing a workable written lease to be used in a cash rental arrangement is important to both the landlord and the tenant. It is estimated that less than half of the cash rental arrangements in Minnesota have written leases between landlords and tenants. Many of these rental agreements continue on an annual basis with only a handshake. As the farming business becomes more complex and risky, it would seem prudent for all parties concerned to develop a workable written cash rent lease. Although an oral lease or rent contract for one calendar year is enforceable, having the contract in writing makes things clear and less subject to dispute.

Minnesota law gives very few guidelines regarding cash rent leases. The only lease agreements that are required to be put into writing are those extending for a period of one year. In Minnesota, there is no deadline when leases must be signed or when termination notices must be given. So-called "Tenancy From Year To Year" leases can last indefinitely and are automatically renewable. To terminate such a lease requires a three month written notice by either party. However, only a 14 day notice is required by the landlord if the tenant fails to make required rental lease payments when the payments are due. Another type of agreement called "Tenancy for Years" usually lasts for a specific number of years. This type of lease agreement expires at the end of the specified period of time and does not require a written notice of termination, unless this is specified in the lease agreement.

Setting up a written lease between landlord and tenant for a cash rental arrangement does not have to be complicated. An attorney is not necessarily required to set up this written lease agreement. However, both parties should sign the agreement in the presence of each other. It is also a good idea to sign the agreement in the presence of a Notary Public.

Following are some items that should be included in a good written cash rental lease contract:

- Name and address of the landlord and tenant.
- Period and length of the rental agreement, with provisions for renewal or cancellation of the agreement.
- A description of the property that is understood by the landlord and tenant (this could be the legal description of the parcel of land).
- The amount of rent to be paid per acre, how many acres involved, and whether the rent is for total or tillable acres.
- The dates that payment(s) are due.
- Signatures of both the landlord and tenant (suggest in the presence of a Notary Public).

These are the basic provisions that all good written cash rental lease contracts should include. There are many other optional provisions that could be added to a cash rent lease to enhance the contract.

These optional Provisions include:

- Land use provisions for maintaining crop rotations, protecting FSA government payments, and maintaining soil conservation practices.
- Necessary cropping and tillage practices on land that is designated "Highly Erodible."
- Environmental aspects relating to the use and handling of chemicals and fertilizers, as well as compliance with federal, state, and local environmental laws.
- Manure application agreements related to application rates, application method, time of application, or whether or not manure is even allowed on the property.
- Operation and maintenance of the farm including items such as minimum soil test levels of phosphorus and potassium, maintaining weed control standards, and tillage practices. Landlords should use caution on this item because tillage methods and crop production practices have changed greatly in recent years. Try to give the tenant as much opportunity as possible to utilize the latest technology in crop production, while still maintaining the farm land to the liking of the landlord.
- Flexible lease arrangements should be spelled out in the lease when they are utilized. Some flexible agreements are flexible on yield, while others are flexible on price, and yet others are flexible on both price and yield. It is important to list the details in the lease for determining flexibility and to indicate the upper and lower cash rent per acre with the flexible cash rent contract. It is critical that a base yield, a time and method for price determination, and a pricing location be established and listed in the contract.
- Type and use of facilities that are part of a cash rental agreement should be listed in the lease contract. This could include grain bins, machine sheds, etc.
- Define an arbitration method to settle any difference between the landlord and tenant.
- If tiling is involved, the lease should include details such as who is paying for the tiling, how the rent will be calculated, and what the repayment clause will be in the event the lease is terminated early or the land is sold before the lease expires.

Changes in Minnesota law as a result of the 2001 legislative session have created new agricultural liens on crops. Landlords have an additional item they can file to protect themselves in cash rent arrangements, even with a written lease in place. Landlords should prepare and file what is called a "UCC Financing Statement". The statement must be filed with the county recorder which then "perfects" the lien. The UCC Financing Statement enables the landlord to secure a lien on crops grown on leased real property. This landlord lien is effective when the crops become growing crops. The perfected lien would cover the amount of rent owed the landlord, if the rent was unpaid. In addition, the landlord's lien, if perfected, has priority over all competing security interests and all other agricultural liens.

The UCC Financing Statement is available at your county recorder's office. It is a one-page document. You need to list the renter's name or organization's name if incorporated, their address, your name and address, and on line 4 write in "This is a landlord lien". The form can be filed both at the state and county level to insure discovery if being checked. The lien is valid for 18 months and should be filed at the time the rental agreement is signed. You can also attach a copy of your rental agreement to the lien statement.

Because agriculture has changed so drastically, it may be very helpful for the tenant to explain to their landlord(s) such things as the cost of inputs, cost of machinery and repairs, how the government program compares to years past, as well as any other key points. This will help all parties involved understand the situation.

The basis for a good cash rental agreement is honesty, fair treatment, and open communications by both the landlord and tenant. All parties involved in a lease agreement must cooperate for the continued enhancement of a good working relationship between a landlord and a tenant.

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