MOSES CONFERENCE
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FARMLAND LEASING: BEST PRACTICES FOR LANDOWNERS & LANDSEEKERS

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FARMLAND LEASING

• Introductions
• Legal Aspects of Farmland Lease Contracts
• Practical Aspects of Working With Farmers and Landowners
WORKING WITH AN ATTORNEY

• The Client is Ultimately the Boss
  • Don’t take standard lease forms for non-standard operations.

• Attorney’s Job is to Look Out for the Client
  • Typically, only representing one side.
  • But, the lease has to work for both parties.
  • Attorney may be fixated on the negative (What can possibly go wrong?).
  • Attorney will create language to protect the Client.
  • The Client may have to say they’re willing to take the risk if the landlord won’t accept a certain provision.
A WORD ON LEGAL DOCUMENTS & ADVISORS

Legal advice is like an insurance policy.
• Contracts are not necessarily dull.
  • Unique farm and farmer characteristics require unique leases.
  • Don’t try to find a one size fits all lease.
  • The right to contract with someone is constitutionally protected.
  • Two parties can enter a contract for about anything you can think of, so be creative.
PRINCIPLES OF LEASE CONTRACTS

• Elements of a Legally Enforceable Contract
  • Offer
  • Acceptance
  • Consideration
  • In Writing?
PRINCIPLES OF LEASE CONTRACTS

• Identification of the Parties
  • Name, address, email, phone number

• Identification of the Land
  • Use legal descriptions where possible.
    • This may be required if:
      • The lease will be recorded; or
      • The lease includes an option or right of first refusal
  • Use maps as attachments
PRINCIPLES OF LEASE CONTRACTS

• The Term
  • Set period of time?
  • Renewable?
  • Rolling lease term?
  • Compliance with state law.
    • What are your state’s lease termination requirements?
      • Iowa requires notice of termination by September 1 that sets actual termination date as March 1.
  • Reimbursement if terminated early?
• Rolling lease terms: The lease is renewed every year for multiple years unless notice is provided.

• Example: This lease shall commence March 1, 2019 and shall be for a term of five years. This lease will automatically renew annually for an additional five year term unless notice of termination is provided to the other party prior to September 1 of any year. For purposes of illustration only, if notice of termination is provided on August 31, 2020, this lease shall terminate on February 28, 2025.
PRINCIPLES OF LEASE CONTRACTS

• The Rent
  • Cash Rent
  • Crop Share
  • Combination
  • When due
  • Discounts for certain practices or results
PRINCIPLES OF LEASE CONTRACTS

• Improvements
  • Can the tenant make them?
  • Who do they belong to?
  • Are they temporary/mobile or permanent?
  • Reimbursement for improvements?
  • Not just buildings, but the land?
IMPROVEMENTS

Should it stay or should it go?
  • Real Property
  • Fixtures
  • Personal Property
PRINCIPLES OF LEASE CONTRACTS

• What is the Lease for?
  • Agriculture
  • Commercial
  • Tourism
  • Education
  • Residential
ESTABLISHING INTENT

• Statement of Purpose:

  - Whereas both parties share a mutual interest in the long-term health and productivity of the agricultural lands and buildings and improvements thereon; and whereas the Landlord wishes to offer a secure and affordable farming opportunity to the Tenant; and whereas the Landlord wishes the property to be farmed according to high standards of stewardship, the parties agree as follows:
    • Helps ensure both parties understand the lease
    • Helps courts determine intent

• Standard of Husbandry:

  - The tenant will farm in accord with the highest standards of good husbandry and to will take all first-class farmerlike steps to ensure the conservation of the natural resources and the long-term productivity of the farm.
PRINCIPLES OF LEASE CONTRACTS

• The Rights and Duties of Each Party
  • Utilities
  • Taxes
  • Insurance
  • Maintenance and Repairs
  • Hunting
  • Inspection
  • Other uses
  • Other parties
PRINCIPLES OF LEASE CONTRACTS

• Recording the Lease?
  • Leases can be recorded in the Recorder’s Office in the County where the land is situated.
  • Is it required?
    • In Iowa, if lease is more than 5 years.
  • Is it a good idea?
    • Probably, if lease is more than 1 year.
    • This gives purchaser’s of the land notice of the lease, binding them to honor the terms of the lease.
COVER CROP EXAMPLE

- Negotiating
  - Who Benefits?
  - Are There Risks?
    - Are There Perceived Risks by Landowner or Farmer?
    - How to Incentivize Participation?
- Drafting?
  - Who Pays?
  - What’s Planted?
  - Who Plants it?
  - Who Kills and When?
GROUND LEASES

- Landowner owns the land.
- Tenant owns the improvement(s).
- Often long-term (99 years)
- Improvements often revert to landowner at termination.
- Need reimbursement provisions for early termination.
CORPORATE ENTITIES

• When the Parties are not Individuals
  • Limited Liability Companies
  • Corporations
  • Partnerships
  • Cooperatives
  • Trusts