What Agricultural Landowners Need to Know Now About Leases to Minimize Future Risk

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According to the USDA – Economic Research Service, there are approximately 911 million acres of farmland in the lower 48 states, with roughly 60% of this farmland owner-operated and 40% of it leased. For tillable cropland acres specifically, the percentage of rented ground is higher, approximately 54%. The farming operations of most crop producers will include extensive rented acreage.

While many agricultural landowners are fortunate to have good, stable tenants, the recent farm economy, with higher input costs, lower crop prices and outdated reference prices, has placed increasing financial pressures on many tenant-producers. Among other things, these pressures have resulted in delays and defaults on rental payments, as well as other lease performance issues.

The farm tenant's payment and performance problems will inevitably create stresses and burdens for the landowner, who typically has his own set of responsibilities and obligations to meet. We seem to be spending more time assisting agricultural landowners with efforts to monitor tenants, secure rental payments and otherwise enforce their lease rights, and this subject area is not without its pitfalls, complexities and key dates. Below are six tips to help agricultural landowners mitigate their risk and protect themselves.

1. Reduce Your Farm Lease to Writing.

Particularly in Arkansas, oral farm leases are common. While these leases may operate as intended, mostly in situations where the landowner and the tenant have a long-standing relationship, they unfailingly omit important terms and details. These can include firm provisions on payment dates, planting decisions, cost-sharing and repairs, maintenance covenants and environmental practices, insurance, taxes, information-sharing, assignment and subletting, handling of farm and conservation program requirements, the right to cure and termination mechanics. Not only can these and other matters be covered, a written lease allows you to gather and codify certain tenant data that may be needed later in the year, for purposes of enforcing your statutory crop lien, as set forth below. It is best to gather this data early in the process, while everyone is on speaking terms and cooperating.

2. Check on Your Farm and Farm Tenant as Planting Season Proceeds and Closes.

If you have a cash rather than share rent, early payment defaults and/or unfulfilled promises to cure an early payment default can signal a need for present action, or at minimum heightened diligence as the crop year progresses. Tenants who default on early lease payments may have had trouble getting a crop loan, or a timely crop loan. We have at times seen crop loan decisions string out deeper into planting season, with the tenant relying on input creditors to get the crop started. This is itself an indication you

need to be careful. Many landowners include a lease term requiring the tenant to provide evidence of a crop loan early in the year, so they can, if necessary, find a viable replacement tenant.

Monitor or inquire about the extent to which the tenant has gotten a good crop planted, or the extent to which the tenant anticipates a prevented planting insurance claim. If the tenant does not have an actual crop in the ground, the landowner's statutory crop lien has nothing to attach to, and there is no security for the tenant's performance of payment and other lease obligations. The tenant may tell the landowner they will pay the rent with proceeds of a prevented planting claim, and they may sincerely mean it at the time, but beware that the crop lender or some other experienced creditor probably will have perfected a lien on any crop insurance proceeds at the beginning of the year, meaning you will be second in line. Liens on crop insurance claims are another issue that can be addressed in a written lease at the beginning of the year, so you have a better chance of obtaining a prior right. In addition, landowners should be aware that the crop insurance program is in many ways unique unto itself, having a stand alone title in the farm bill and its own administrative agency within USDA, and there is a specific process for obtaining an assignment and/or creating a lien on crop insurance proceeds. You'll need to follow this process in order to properly protect your rights.

3. If You Have an Oral Lease, Consider Sending the Farm Tenant a Notice of Non-Renewal by June 30.

At common law, a year-to-year tenant, such as a farm tenant with an oral lease, is entitled to at least six months' notice that the lease will not be renewed for the following year. In the absence of timely notice of non-renewal, a farm tenant can force the landowner to lease the premises to them the next calendar year. Arkansas has long had a specific statutory method for providing notice of non-renewal of an oral farm lease. *See* Ark. Code Ann. § 18-16-105. The statute requires notice of non-renewal by certified mail **no later than June 30**, consistent with the common law rule. The 2025 legislature amended the statute to require service of the notice using one of the methods identified in Ark. R. Civ. P. 4, which requires a little more knowledge or care by the landowner.

A notice of non-renewal is not necessarily intended to inject a hostile or adversarial tone into your relationship with the tenant. If you are generally satisfied with the tenant, you can preface it by making clear you may stay with them the next year but want to negotiate an appropriate written lease or otherwise keep your options open.

4. Before or Shortly After July 15, Obtain the FSA-578/Crop Acreage Report for Your Farm.

Producers who participate in federal farm programs (i.e. virtually all of them) are required to file a crop acreage report with FSA every year after planting is complete. This is often referred to as "certifying the crop." The certification or reporting deadline can vary by crop, county and state, but for most major crops it's **July 15**. The Report of Acreage form is, specifically, an FSA-578, and it contains several items of information useful to the agricultural landowner. It will tell you what crop the tenant planted on what tracts and fields, or if the tenant is making a prevented planting claim for a tract or field, the completed form will state that as well. If you have a crop share lease, the completed form should list your name and percentage of the crop. And the form allows you to verify that the tenant has in fact certified the crop to FSA in the same name they used on your lease. A single farming operation can (and probably will) include numerous embedded persons and entities, and while there are perfectly valid, sound and prudent business reasons for doing this, the wrong tenant can take advantage of it to dodge a landowner or other lienholder. If you review the FSA-578 and discover the tenant has certified the crop to FSA in a name different than the name on your lease (and we have seen this happen), you may still have time to force corrective action and maintain your lien on crops grown by the "off-lease" producer, but delaying a check of the form, or neglecting to check it at all, can lead to loss for the landowner.

5. As Harvest Season Approaches, Find Out Where the Tenant Intends to Deliver the Crop and Send Notice of Your Landlord's Lien in Accordance with the Food Security Act.

If as harvest season arrives you have concerns about full payment of the rent, there are ways to ensure your name is included on payments issued to the tenant for harvested crops. Granaries, mills and crop buyers generally don't have to include a landowner or other lienholder's name on payments to the tenant, unless the landowner or lienholder has complied with the Food Security Act of 1985, 7 U.S.C. § 1631, in which case they can have liability for omitting the landowner or lienholder from the check. In some states, compliance with the Act occurs through a UCC filing, but Arkansas is a "direct notice" state, where a notice compliant with the Act must be sent directly to the crop processor or buyer. Proper notice will require you to have the tenant's correct name, address and tax identification number. It is again best to have obtained this information early on. You'll also need to have information on where the tenant intends to deliver the crop, so you'll know who to send the notice to. It is good to have the tenant provide this information in writing. In serious enough situations, where there is a profound lack of trust, we have sent notices to every licensed grain dealer in the state, but that is rare.

6. If You Continue to Remain Unpaid, File Suit to Enforce Your Landlord's Lien Within Six Months of the Date Your Last Rental Payment Was Due.

Under Ark. Code Ann. § 18-41-101, agricultural landowners in Arkansas have a very favorable, almost sacrosanct crop lien. Unless the landowner has agreed to subordinate it, the lien is first in priority, and no action is needed to perfect it. The only caveat is that the landowner must file suit to enforce the lien **within six months** of the date the rent becomes due and payable. Be mindful of this deadline, and don't let it pass. Your crop lien is nearly always your best security.

Using these strategies, agricultural landowners can help mitigate their risk and protect themselves now and in years to come.

Attorney Jack Talbot has extensive experience as a trial lawyer with a focus on business law, agriculture and real estate. He primarily represents agribusinesses, landowners, land managers, farming partnerships, cooperatives, forest product companies and other business entities.