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## South Dakota's Rental Agreements: What is a Legal Lease?

*Burton Pflueger, Extension farm financial management specialist*

Each year the South Dakota Cooperative Extension Service receives many questions concerning the legality of land lease agreements. South Dakota law addresses many aspects of land rental arrangements. The material in this publication is presented only as a guideline or reference. This material is presented with the understanding and intent that the authors are not providing legal services. South Dakota codified law has specific sections and language that pertain to agricultural and grazing leases. The following information is not intended to be an all-inclusive list of all provisions of South Dakota law governing agricultural and grazing leases, but is provided as reference material only. This material was obtained from the South Dakota Legislative Research Council Web page at <http://legis.state.sd.us/statutes/index.aspx>. The information in this publication is believed to be current as of the date of publication. Readers are cautioned to check with an attorney regarding any changes to the legal code governing agricultural and grazing leases. **If legal advice relative to a problem is desired, the services of a competent attorney should be obtained.**

South Dakota law specifies that a land lease is a contractual agreement between the landlord and the tenant. South Dakota Codified Law (SDCL) section 43-32-1 states:

Leasing is a contract by which one (the lessor or landlord) gives to another (the lessee or tenant) temporary possession and use of real property for reward and the lessee agrees to return such property to the lessor at a future time.

According to South Dakota codified statutes, "a contract is an agreement to do or not to do a certain thing" (SDCL 53-1-1). South Dakota law also defines the essential elements of a contract (SDCL 53-1-2):

- (1) Parties capable of contracting;
- (2) Their consent;
- (3) A lawful object; and
- (4) Sufficient cause or consideration.

South Dakota law also allows for contracts to be expressed or implied (SDCL 53-1-3). The difference between the two is that an express contract is one in which the terms are stated in words, while an implied contract is one in which the existence and terms of which are manifested by conduct (SDCL 53-1-3).

### **DOES A LEASE NEED TO BE A WRITTEN LEASE?**

This is a common question asked by both tenants and landlords. Obviously, many farm lease agreements have existed for years without being

written down. Where both parties know and trust each other, an oral lease may work perfectly well. However, there are several reasons why a written lease can be beneficial, even in the most amicable of situations. Even when key points have been discussed, a written lease provides a clear record of what was agreed to. The type of lease agreement you use can affect tax liabilities, including income and self-employment taxes. It can also affect whether a farm qualifies for special use valuation for estate taxation. A written lease provides useful documentation for making the preceding determinations, or in case of an audit. A preprinted lease form may contain provisions that tenants and owners have not thought of discussing.

### **Why a written lease?**

A written lease is like minutes of the meeting: a lease tells when you met, who was there, and what was decided. Written leases make the lease terms more definite and leave less chance for disagreement and misunderstanding. People tend to selectively recall only those portions of conversations that reinforce their point of view. It protects not only the original parties, but also the assignees and heirs in case either party should die. A written lease encourages both parties to consider many phases of the lease before the lease period begins. Decisions are made before the problems occur. In subsequent years, a lease provides a basis for changing lease provisions when adjustments are desirable, as well as documentation in case of an Internal Revenue Service audit.

South Dakota law also requires that leases for longer than one year must be written. The specific section of the law is SDCL section 43-32-5:

No agreement for the leasing of real property or an interest therein for a longer period than 1 year is valid unless the same, or some note or memorandum thereof, be in writing, signed by the lessor or his agent thereunto authorized in writing.

In addition, South Dakota law states that an agricultural land lease must not exceed 20 years. SDCL section 43-30S-3-states:

No lease of agricultural land for longer period than 20 years is valid, and no lease of any town or city lot for a longer period than 99 years is valid.

### **ORAL LEASES**

Oral leases are valid for only 1 year in South Dakota (SDCL 43-32-5). If a longer contract is desired, it must be in writing (SDCL 43-32-5). The other provisions of South Dakota statues that pertain to oral leases deal with renewal of oral leases. SDCL section 43-32-22.1 states:

In the case of farm tenants, occupying and cultivating agricultural land of forty acres or more, under an oral lease, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other by September first, whereupon the tenancy shall terminate March first following. The tenancy may not continue because of absence of notice if there is default in the performance of the existing rental agreement. For the purpose of this section, agricultural land includes grassland, either native or tame.

### **DEFINITIONS IMPORTANT TO LANDLORDS AND TENANTS**

South Dakota law also contains specific definitions important to landlords and tenants who are considering agricultural lease agreements. SDCL section 43-2A-1 states:

For purposes of this chapter, the term 'agricultural land' means land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any royalty interest, any oil, gas, or other mineral interest, or any lease, right-of-way, option, or easement relating thereto, or any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use.

## Definition of terms

Terms used in South Dakota Codified Law, unless the context otherwise clearly requires, mean (from SDCL section 45-5A-3):

- (1) 'Agricultural production,' the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially.
- (2) 'Mineral development,' the exploration for or drilling of an oil and gas well or mineral test hole which requires entry upon the surface estate and was commenced subsequent to June 30, 1982, and the oil and gas production operations ensuing therefrom.
- (3) 'Mineral developer,' the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
- (4) 'Mineral estate,' an estate in or ownership of all or part of the minerals underlying a specified tract of land.
- (5) 'Mineral,' any substance with economic value, whether organic or inorganic, that can be extracted from the earth, including oil and gas, but excluding water.
- (6) 'Surface estate,' an estate in or ownership of the surface of a particular tract of land.
- (7) 'Surface owner,' the person who has possession of the surface of the land, if other than the mineral developer, either as an owner or as a lessee.

## TERMINATION PROVISIONS

South Dakota law addresses lease termination. Specifically, SDCL section 43-32-22 states:

A lease is terminated:

- (1) By the expiration of the agreed term.
- (2) By the mutual consent of the parties.
- (3) By the tenant acquiring a title to the leased premises superior to that of the landlord.

SDCL section 43-32-23 states:

If a lease is terminable at the pleasure of one

of the parties, it is terminated by notice to the other of such party's death or incapacity to contract. In other cases it is not terminated by such death or incapacity.

There is another section of South Dakota Codified Law that may influence the termination provisions of a cropland lease. SDCL section 43-32-14 states:

If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

## TIME FOR PAYMENT OF RENT

The author recommends that the lease contract specify the timing and amounts of rents. If the contract does not specify the time for payment of rent, SDCL section 43-32-12 states:

When there is no contract or usage to the contrary, the rent of agricultural and wildland is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

## USE OF PREMISES WHEN LEASED

South Dakota law has specific language on how land can be used once it has been rented. Specifically, South Dakota Codified Law section 43-32-11 states:

If premises are leased for a particular and specified purpose the tenant must not use the premises for other purposes; and if he does, the landlord may hold him responsible for the safety of the premises during such use, at all events, or he may treat the contract as thereby rescinded.

## **OTHER LANDLORD AND LESSEE PROVISIONS**

In this section, additional information concerning landlords and tenants is included. Again, readers are cautioned that this discussion is not intended to address all aspects of South Dakota law concerning leased lands. Readers are encouraged to consult with an attorney to obtain qualified legal advice on specific questions.

Landlords may register the rental agreement contract with the register of deeds in the county where the land being rented is located. Registering the rental contract with the register of deeds is important because by doing so the landlord can reserve the ownership or title to crops growing or to be grown upon the rented land. The landlord's ownership of crops would be effective until the crop is divided between the landlord and the tenant. The section of SDCL where this right of the landlord is specified is SDCL section 38-17-1. It should also be noted, as stated in SDCL section 38-17-2, that the landlord's reserved title is not enforceable unless the rental contract is filed with the register of deeds in the county where the rented land is located. Payment related to a crop-land rental agreement contract may be influenced by another lien that could be filed with the register of deed. That lien would be a seed supplier lien. SDCL section 38-17-3 states:

Any person who provides wheat, oats, barley, rye, corn, flax, sudan, milo, millet, soybeans, sunflowers, or potatoes, to be planted upon any lands owned, used or rented by another has a lien upon the crop produced from the seed, if the person providing the seed files the notice specified in § 38-17-5. A landlord and

tenant may limit the amount of seed to be furnished to a tenant by a provision in a lease if the lease is filed in the register of deeds office before the seed is furnished to the tenant.

Readers are again reminded that the information in this publication is presented with the understanding and intent that the author is not providing legal advice or services. If legal advice relative to an agricultural land lease is desired, the services of a competent attorney should be obtained.



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