Start with a Handshake, 
End with a Lawyer

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A handshake is a good way to start the discussion about leasing your land, but with the help of a good lawyer you can be sure all the elements are put in writing.
Today we see more and more land being leased for grazing. Elderly ranchers retire and the younger generations don’t want to ranch, so the land is leased. For cattlemen, it’s an opportunity to use land without having to buy it.

We’ll take a look at some key things to consider in structuring a good lease.

- Term
- Rent
- Surrender of the property at the end of the lease
- Usage
- Operate in a good, workmanlike manner
- Not commit waste
- Improvements made
- Landlord’s lien

**Term**

The term is how long the lease will run. It is usually a specific number of months or years and should contain both a specific start and ending date. If the parties want to be able to renew the lease, that can also be included in this paragraph.

Here is a sample of the language that might be in a lease to document the length of a lease: *The tenant agrees to lease from the landlord the following described ranch for a period of five (5) years for the purpose of grazing tenant’s cattle. The lease term shall begin on Jan. 1, 2015, and terminate on Dec. 31, 2019.*

**Rent**

The rental charge can be money, labor, goods or a combination of these.

Let’s consider the needs of both parties. The grazing tenant may simply need grass for his cattle. The landlord might need fences repaired and other work done. If this is the case, the tenant might pay for the use of the grazing land by performing certain work the landlord needs.

The landlord might want to build his own cattle herd, but does not have the cash to buy cows. In this situation, the rent may be paid in the form of a certain percentage of calves born on the ranch (for instance, one-third of the calves).

There are certain duties that are read into a lease setting requirements on both parties to the lease. In law, these required duties are called covenants.

For example, if the rent is to be paid in the form of a percentage of the calves born on the ranch during the period of the lease, then it would be wrong for the tenant to move his cows off the ranch just before they calve, hoping to avoid paying rent.

The unwritten duty (or covenant) on the part of the

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**Elements of a Lease**

- **Term** – the tenant may use the property for a specified period of time
- **Rent** – the tenant will well and punctually pay rents as required in the lease
- **Surrender of the property at the end of the lease** – the tenant will quietly surrender the property to the landlord on the day the lease expires
- **Usage** – the tenant should be able to use the leased property for a specific purpose, such as grazing cattle
- **Operate in a good, workmanlike manner** – the tenant will not make any changes to the property without first obtaining the landlord’s written consent
- **Not commit waste** – the tenant will maintain the property in good condition and return it to the landlord at the expiration of the lease in as good condition as it was at the beginning of the lease, reasonable wear and tear being excepted
- **Improvements made** – all improvements made to the property generally become the property of the landlord and the tenant will leave them at the expiration of the lease
- **Landlord’s lien** – a lien upon all personal property of the tenant that is placed on the property until the tenant has paid all lease fees, damages to the property, etc.
parties is to cooperate with each other. If the cows are due to calve before the lease expires, and if the conditions on the ranch have not been substantially changed, then it would be a breach of the lease for the tenant to remove the cows from the leased ranch before calving.

Another example of rent is the tenant’s agreement to provide all the labor for maintaining the existing perimeter fences for all leased acres during the term of the lease, including the clearing of brush, piling and burning of brush piles. When wire or posts need to be replaced, the landlord would purchase the needed fencing supplies at his own expense. The tenant would provide all labor to rebuild the fences.

**Surrender of property**

The tenant has the legal right to use the ranch only as long as the lease is in effect.

At the end of the lease term, the tenant must give up possession of the ranch and return it to the landlord.

This makes it clear that when the lease is over the tenant must remove himself and his cattle from the ranch, return the gate keys to the landlord and leave the property in at least as good condition as it was when the tenant moved in.

**Operate in a good, workmanlike manner**

Many grazing leases have some provisions relating to use of the property in a good, workmanlike manner, or words to that effect. The provision usually contains wording that if the tenant does not use the ranch in a good, workmanlike manner, he breaches the lease and must move off the land.

In the case of [Texas Rural Communities v. Avery](https://www.s大姐.com) 1938 Texas Court of Civil Appeals 113 SW.2d 597, the landlord claimed the tenant had not used the property in a good, workmanlike manner because he planted row crops across terraces in the land in a way that would cause erosion.

Here the Texas Supreme Court said courts usually do not like clauses that have forfeiture of a lease as the consequence for improper workmanship. But if the lease contained such a provision, and the parties to the lease agreed to it, then courts would enforce those provisions.

The rancher tenant lost the case.

The Avery case went on to say that Texas A&M agricultural professors and other ranchers can testify as experts about the extent and values of damage, workmanlike manner, etc.

Here is a sample of the language that might be in a lease to document the concept of operating in a good, workmanlike manner:

Tenant agrees to be a good steward of the land by annually improving pasture quality through good management while minimizing brush and weed encroachment.

The tenant may also be required in the lease to take reasonable steps to attract wildlife such as quail and turkey. The primary aim here is to develop and maintain pastures that are best adapted to the region.

**Not commit waste**

The tenant cannot do anything that destroys the value of the land, unless he has permission from the landowner. If a tenant does destroy part of the land he is leasing, what can the landowner do about it? The fol-
lowing 1979 Texas case of McVea v. Verkins is a good example.

In this case, the landowner leased the grazing rights to a large pasture. The lease allowed only for grazing cattle. The tenant also had a barbeque business in town. The tenant began cutting trees on the leased ranch property to burn in his barbeque business, without the knowledge or permission of the landowner.

When the landlord found out about the tree cutting, the landowner did not demand the tenant return the wood and pay him for the damages. Instead, the landowner filed criminal charges against the tenant for stealing the timber and changed locks on the pasture gates to keep the tenant out. Then the landlord seized the tenant’s cattle, sold them and kept the money as payment for the damages he suffered from his trees being wrongfully cut.

The landowner also sued the tenant for wrongfully cutting his trees, but lost the lawsuit. In Texas, a landlord cannot terminate a written lease with his tenant for breach of the lease without first making a demand upon the tenant to correct the breach (McVea v. Verkins, 1979 Texas Court of Civil Appeals, 587 SW.2d 526).

Texas law does not give the landlord the right to take a tenant’s property to satisfy a landlord’s lien. The landlord must first sue the tenant to enforce his lien. Then when ordered by a judge, he can keep the tenant’s personal property. Self-help, in this sense, usually does not work.

Here is an example of the language that might be used in a lease to document waste:

Tenant agrees to not abuse the lease property by overgrazing or otherwise, in any way, so as to cause damage to the landlord’s ranch. The right to graze livestock does not give the tenant the right to use or remove timber, water, stone, gravel, dirt or any other substance for any purpose.

After discussion between the parties, the landlord may give the tenant certain additional usage rights, but this must be done in writing and signed by both parties before tenant begins any other work.

Improvements made

Generally, any improvements made by the tenant become the sole property of the landlord at the conclusion of the lease. Anything that becomes attached to the soil (i.e. fence posts, cattle guards, bridges, culverts, etc.) become part of the real estate and are, therefore, owned by the landlord.

Here is an example of the language that might be used in a lease to document the status of improvements at the end of the lease:

Any improvements made by the tenant become the sole property of the landlord at the conclusion of the lease.

Permanent cattle handling facilities built by the tenant at the tenant’s expense will generally become the sole property of the landowner when the lease is over.

This is not so with temporary facilities.

The landowner should not expect the tenant to seek grants – such as wildlife conservation easements – to reduce taxes for the landowners where those grants are of little, if any, benefit to the tenant.

Landlord’s lien

Under the laws of most states, the landlord has a lien against all of the tenant’s personal property on the leased premises to guarantee the tenant’s payment of lease fees, damages and other charges.

A lien is a special right created by statute. Therefore, the statute creating the lien must be followed exactly and to the letter. Failure of the landlord to do exactly what is required in the law will cause the landlord to lose the lien.

The lien statutes also provide for how the lien can be foreclosed upon and the tenant’s property sold to satisfy the lien.

Again, these laws must be followed specifically or all is lost. Failure to follow the lien law does not preclude the landlord from suing in court, but he must follow a more lengthy, complicated and expensive process in court as opposed to the quicker and simpler lien foreclosure.

There are a few other factors to consider when leasing land.

Nuisance

In Texas, a nuisance can arise by someone causing (a) physical harm to property, (b) physical harm to a person on his property, (c) physical harm to a person on his property from an assault on his senses (chemical odor, for instance), or (d) emotional harm to a person from the deprivation of the enjoyment of his property through fear, apprehension or loss of peace of mind.

To win a nuisance lawsuit, the injured party must prove that his interests were invaded by the defendant when the defendant (i) intentionally invaded his interests, or (ii) negligently invaded his interests, or (iii) did something abnormal and out of place in its surroundings (Ehler v. LVDVD, LC. 2010 Texas Court of Appeals, 319 SW.3d 817)
But when someone causes you harm you cannot
wait too long to file your lawsuit.

The owners of a dairy stacked cow manure at the
edge of their property.

One day when it rained very hard, some of the ma-
ture washed onto the neighbor's property. More than
a year later, the same thing happened again.

The neighbor sued the dairy for causing a “nuisance.”
The Texas Agricultural Code Section 251.004(a) pro-
vides that the lawsuit must be brought within 1 year
of the date when the problem first arises.

Specifically, it says that no nuisance lawsuit can
be brought against an agricultural operation that has
lawfully been in operation for a year or more prior to
the date when the lawsuit is filed.

And if the conditions or circumstances that were
complained of have existed substantially unchanged
since they were established, the agricultural operation
will win the lawsuit.

So the critical question the courts look at in these
cases is whether the agricultural business commenced
the operations complained of more than 1 year before the
lawsuit was filed. If it did, the agricultural entity wins.

Adverse possession

Is it possible for someone to become the owner of
real estate without ever having a deed to it? Yes, this
is possible through adverse possession.

If a trespasser uses property as if he is a true owner
(when in fact he is not), and does it so anyone else can see
what he is doing (open and notorious) for 10 years,
then under Texas Civil Statutes Articles 5510 and 5515
he becomes the legal owner. The trespasser must claim
the rights of ownership against (adverse to) the real
owner for 10 continuous years. (Wilson v. Rogers, 1961
Texas Court of Civil Appeals, 343 SW.2d 309)

If the true owner knows about it and gives the tres-
passer permission to use the property, then it is no longer
adverse and the deeded owner is still the true owner.
What if the trespasser pays rent to the true owner? Then
he is no longer a trespasser and the act of paying rent
recognizes that he is not claiming to be the owner. He
recognizes the person to whom he is paying the rent is
the true owner, hence no adverse possession.

Exclusive use and other uses

Leasing the grazing rights to a ranch does not
give the tenant the exclusive use of the property. In
a Texas case, the landowners signed a grazing lease
with a cattleman and an oil and gas lease with an oil
company to drill for oil.

The oil company tried to enter the leased land to
drill a well and the cattleman tenant refused to let the
oil company come on the land.

The cattleman tenant said the drilling of a well
would interfere with his cattle.

The oil company sued the cattleman. The court
ruled that the cattleman could use the leased land
for grazing and the oil and gas company could use its
lease to drill the well. They were separate leases and
neither lease ruled out the other's since they were not
for exclusive use of the ranch property.

The oil company won, with the court saying the
cattle tenant was required to allow the oil company
to also have its lease and drill on the same property
(Stanolind Oil & Gas Co. v. Wimberly, 1944 Texas Court
of Civil Appeals 181 SW.2d 942).

Damages

If either party to a lease breaches the lease con-
tact, how much money can the innocent party re-
cover? The usual measure of damages is the amount
that would be needed to return the innocent party
to the position he would have held had the breach
not occurred.

This could include what it would cost the tenant
to lease similar land to graze his cattle, or the actual
money cost suffered by the landlord to repair the dam-
gages caused by the tenant, etc. The innocent party
can usually sue for either (or both) breach of the lease
contract and the wrongful conduct of the other party.
When there is a breach of the lease contract, Texas
courts have generally declined to award the landlord
punitive damages as punishment to the wrongdoer
even for the tenant's intentional misconduct. Weber
v. Dornel, 2001 Texas Court of Appeals 48 SW.3d 435.

However, if the lawsuit had alleged intentional mis-
conduct of a severe wrong, the innocent party might
receive punitive damages.

The law involved in leasing property can become
quite complicated. Most of the examples here relate to
the State of Texas. Other states follow similar practices,
but not exactly.

The safest thing to do, as either a tenant or landlord,
is to see your lawyer and have him or her write up
a good lease to protect you in your particular needs.
While a handshake used to be all it took, we are sad
to say those days are gone.

Be careful, get a lawyer. It has become just another
cost of doing good business today. TC