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Ag Lease Termination and Hunting Rights

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Cornhusker Economics

Ag Lease Termination and Hunting Rights

| Market Report | Year Ago | 4 Wks Ago | 9-6-19 |
|--|----------|-----------|--------|
| Livestock and Products | | | |
| Weekly Average | | | |
| Nebraska Slaughter Steers, 35-65% Choice, Live Weight. | * | * | * |
| Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb. | 169.69 | 173.82 | 170.01 |
| Nebraska Feeder Steers, Med. & Large Frame 750-800 lb. | 163.74 | 156.48 | 148.65 |
| Choice Boxed Beef, 600-750 lb. Carcass. | 209.13 | 216.04 | 229.51 |
| Western Corn Belt Base Hog Price Carcass, Negotiated | 45.05 | * | * |
| Pork Carcass Cutout, 185 lb. Carcass 51-52% Lean. | 66.84 | 87.97 | 72.64 |
| 115.00S*laughter Lambs, woolled and shor102.50n100.00,105.00 135-165 lb. National. | 136.50 | 136.50 | 137.50 |
| National Carcass Lamb Cutout FOB. | 377.15 | 395.17 | 395.99 |
| Crops | | | |
| Daily Spot Prices | | | |
| Wheat, No. 1, H.W. Imperial, bu. | 4.63 | 3.45 | 3.46 |
| Corn, No. 2, Yellow Columbus , bu. | 3.31 | 3.87 | 3.51 |
| Soybeans, No. 1, Yellow Columbus , bu. | 7.29 | 7.77 | 7.54 |
| Grain Sorghum, No.2, Yellow Dorchester, cwt. | 5.13 | 5.98 | 5.23 |
| Oats, No. 2, Heavy Minneapolis, Mn, bu. | 2.93 | 3.01 | 3.00 |
| Feed | | | |
| Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton. | 185.00 | * | * |
| Alfalfa, Large Rounds, Good Platte Valley, ton. | 102.50 | 115.00 | * |
| Grass Hay, Large Rounds, Good Nebraska, ton. | 102.50 | 100.00 | 105.00 |
| Dried Distillers Grains, 10% Moisture Nebraska Average. | 136.50 | 136.50 | 137.50 |
| Wet Distillers Grains, 65-70% Moisture Nebraska Average. | 44.00 | 40.50 | 42.50 |
| * No Market | | | |

There are many questions regarding the differences between written and unwritten agricultural land leases for cropland and for pasture. This Q&A explores some of the more important differences, focusing on lease termination requirements and the status of hunting rights on leased cropland and pasture.

How are cropland leases terminated in Nebraska? That depends on the type of cropland lease. If it is a written lease, the lease terminates according to its terms. If the lease does not address how the lease is terminated, it automatically terminates without notice on the last day of the lease (no six-months notice requirement).

If the cropland lease is an unwritten lease, notice of termination must be given by the landlord to the tenant six months before the beginning of the next lease year. In Nebraska--and in the absence of a written lease specifying a different date--the lease year begins on March 1 (even for fall-planted crops). That means that notice to quit must be given no later than the preceding September 1.

This six-month notice requirement also applies when the land is sold. If the land is subject to an unwritten lease and is sold October 1 and no notice to quit was given by the preceding September 1, the buyer is subject to the unwritten lease. This is why many written leases contain a provision to the effect that the sale of the property terminates the lease subject to the tenant's right to harvest any growing crop.

How are pasture leases terminated in Nebraska?

The legal rule is the same as for written cropland leases—a written pasture lease terminates according to the terms of the written lease (whatever they may be). If termination is not addressed in the written pasture lease, the lease terminates automatically without notice on the last day of the lease (no six-month notice requirement).

If the typical May-October pasture lease is not written, there is no legal requirement for termination notice. The only Nebraska case addressing this is from 1955, where the court ruled the tenant was not entitled to a six-month notice of termination of an unwritten May-October pasture lease. *Barnes v Davitt*, 160 Neb 595 (1955). So tenants with unwritten pasture leases are not entitled to a six-month notice of lease termination (in contrast to unwritten cropland leases).

Who has the hunting rights for leased land?

A written cropland or pasture lease can specify who has hunting rights. If the written lease does not reserve hunting rights in the landlord directly or indirectly, the hunting rights would go to the tenant for the duration of the lease. This surprises most folks who wrongly believe that the landlord automatically retains many property rights that in fact go to the tenant during the period of the lease term (unless the lease specifies otherwise). A lease written by an attorney would normally address hunting rights (typically reserving them to the landlord) but a lease written by a non-attorney might overlook that issue. I would advise tenants who want to keep their leases to discuss hunting rights with the landlord if those rights are not clear and to not take any action that could cost the tenant the lease when it is up for renewal.

If the cropland lease is unwritten, the tenant would have the hunting rights unless the parties have a different agreement. This is under the general notion that in the absence of explicit limitations (as would be included in a well-written lease), the tenant has full rights to use the land to the exclusion of all others, including the landlord, during the term of the lease. For a May 1-October 1 pasture lease, the same rule would likely apply but only during the May 1-October 1 period. That is, the tenant might have the hunting rights from May 1-October 1 but not outside that period without the express permission of the landlord. This may seem like a peculiar result but is

how I think Nebraska courts would rule on the issue in the absence of a written lease.

Benefits of written leases. Unwritten leases can lead to many questions (such as who has the hunting rights, who has the right to graze cornstalks, etc.) which can be anticipated and addressed with a well-written lease. For this reason, landlords should have their attorney prepare written cropland leases and/or written pasture leases to make sure that the rights and obligations of both the landlord and tenant are clear to both parties. Where the respective legal rights of the landlord and tenant are unclear, such as with an unwritten lease, the tenant should discuss potential issues with the landlord and be receptive to the landlord's wishes. Common sense tells us that if the tenant's actions go against the landlord's wishes, the tenant is not likely to have the lease renewed.

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