



Texas Grazing Lease Checklist

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Leasing land to another person for grazing can benefit both the landowner and the lessee. It allows an additional source of income for the landowner and permits the lessee to run livestock on land without incurring the long-term debt associated with purchasing property.

Although it is common in rural America for neighbors to conduct business on nothing more than a handshake, all agricultural leases should be in writing to ensure that they are enforceable, to record the parties' understanding, and to protect both parties' rights. Under Texas law, certain leases, such as a lease lasting for 1 year or more, must be in writing to be valid and enforceable.

The following checklist contains many of the most common terms found in grazing leases. It is certainly not exhaustive, and not all of these terms may be necessary in every lease. Written from the landowner's point of view, this list may also be useful to a lessee in the negotiation process. **It is not a substitute for legal advice.** All parties—landowners and lessees—should consult with their own attorney when entering into a grazing lease to make sure the lease is complete, legally binding, and protects their interests.

□ Names of the parties:

Include the names and addresses of the parties, both the landowner and the lessee.

□ Duration of the lease:

Specify the length of the lease. Leases may range from weeks to several years, and leases of certain durations may be required to be in writing. For example, Texas requires a lease of real property lasting for more than 1 year to be in writing in order to be an enforceable contract. Generally, grazing leases are classified either as a "tenancy for a term of years" or a "periodic tenancy." A tenancy for a term of years refers to any set lease term (whether months or years) that terminates upon the conclusion of the term. Under a periodic tenancy, the lease will automatically renew at the end of the initial term unless a specific notice of the intent not to renew is given by either party. In this instance, it



is important to determine the amount of notice that will be required. It is in the best interest of both the landowner and tenant to require a lengthy notice period so that, in the event the lease will not be renewed, the landowner has time to secure a new tenant and the lessee has time to find alternative arrangements for his or her livestock. It is advisable that notice be given in writing.

Description of the land:

Describe the land so that both parties (and a judge or jury if there were to be a dispute over the lease) can understand exactly what land is being leased. Use legal metes-and-bounds descriptions, a photograph or diagram showing the specific location, or simply use words if a specific description can be conveyed. If any areas are to be excluded from the lease, include this limitation in detail in the lease agreement. For example, if there is an apple orchard in the back corner of the property and the landowner does not want the lessee's cattle in that area, address this in the lease.

Stocking limitations:

Include stocking limitations that define the number of head, species, and breed of animal permitted. For example, the stocking rate may differ if the lessee intends to run 1,000-pound Angus cattle versus 1,600-pound Charolais cattle on the land. Therefore, a landowner may want to specify the breed or size of cattle permitted. Also address whether the lessee can keep other animals on the property, such as a horse with the cattle or a llama with the sheep.

Price:

Specify the lease price. The price for grazing leases varies based on factors such as the number of acres of land, the available forage, the number of livestock that may be grazed per acre, and the type of livestock to be grazed. Although the price can be based on any formula the parties desire, most grazing leases are priced

either per acre, per head, or per animal unit. Though less common in grazing leases than in farming leases, the parties could agree to a "crop share" lease based on a percentage of the calf crop sold or on the weight gained. To determine a reasonable lease price, talk to your local county Extension agent and other landowners in the area. Also, the USDA publishes average county lease rates each year. Check online at http://www.nass.usda.gov/Statistics_by_State/Texas/Publications/Economics_Reports/cr_40.htm.

Payment method:

Determine the payment method. Payments may be made in any manner agreed upon by the parties. Frequently, payments are set up in a month-to-month format. Include details on exactly how and when rent is due and the penalties and interest for late payments.

Failure to pay:

In addition to imposing penalties and interest on late payments, include a clause that ensures the right to terminate the lease if the total amount owed in late payments, interest, and fees reaches a certain amount. Also, be aware of any statutory lien rights available to unpaid landowners under Texas law, including understanding any action the landowner must take for such rights to be enforced. Generally, the statutes providing for lienholder status related to agriculture are found in the Texas Agriculture Code and the Texas Property Code.

Security deposit:

Require a security deposit to cover any damage caused to the property, improvements, fences, crops, or livestock while the lessee is in possession of the property.

Access to the land:

State how the lessee is to access the property, designating any entrance points, gates, and roads the lessee is permitted to use.

Use of vehicles or ATVs:

State whether the lessee is permitted to use vehicles or ATVs on the property and, if so, whether there are any areas where such vehicles are prohibited.

Requirement that gates be kept closed:

Stipulate that all gates be kept closed at all times. If other livestock are present or in adjacent pastures, also include a requirement that the lessee is liable for the death or injury of any livestock or damages to a third party caused due to a gate being left open by the lessee.



Photo courtesy of Richard Teague

□ Use and repair of facilities on the property:

Discuss the right of the lessee to use any facilities on the property including barns, buildings, corrals, and houses. Describe who will be responsible for making repairs and paying for both parts and labor.

□ Inspection of the fences:

Address who will be responsible for inspecting and repairing fences, particularly where the leased property abuts a highway, which party will make these inspections, and the frequency at which they should be made.

□ Right to erect improvements on the property:

Address whether the lessee has the right to erect any improvements on the property. Improvements could include buildings, fences, pens, water delivery systems, or anything that could be considered permanent. Generally, permanent improvements stay on the land after the termination of the lease. Consequently, the landowner may want to have input on the location and building specifications for any such improvements. Some leases require the lessee to get written permission from the landowner before taking any such action. To avoid confusion or conflict, specify whether the lessee has the right to remove any improvements at the end of the lease and set a deadline for such removal.

□ Landowner's rights to the property:

Cover whether the landowner wants to retain rights to the property, including the right to hunt. Unless reserved, the landowner grants exclusive possession of the property to the lessee, meaning that the landowner may not enter the property. The landowner may want to reserve the right to enter the property for various reasons during the lease, including to care for crops and to inspect the premises. The landowner and his or her attorney should determine if the right to inspection might be outweighed by liability concerns that such a right might impose.

□ Other surface uses:

Identify all surface users of the property during the lease term (such as oil and gas companies that have a mineral estate lease, hunters with a hunting lease, and the landowner himself) so the lessee is aware of these uses and require that the lessee act in good faith to accommodate and cooperate with them.

□ Provisions regarding mineral production:

Cover potential issues related to the impact of oil and gas production on the grazing lease. It is important for both the landowner and lessee to understand the law related to surface and mineral rights. In Texas, the mineral estate is considered the dominant estate. This means that the mineral owner or lessee (like an oil and gas company) has the right to use as much of the surface estate as is reasonably necessary in order to produce the minerals. Unless limited by contract, this includes the right to conduct operations on the surface of the land, build roads, construct pipelines, drill deep subsurface injection wells, and use groundwater. These actions could negatively impact the lessee and interfere with his or her grazing lease. In light of this, spell out what will happen if oil and gas production begins. The lease should require that notice be given to the lessee once an oil and gas lease has been signed, state how rent will be reduced if grazing rights are adversely affected, and provide for either party to terminate the lease in this circumstance.

□ Care of the livestock:

Be specific about expectations for livestock care. Often, especially during a drought, a landowner may not only offer grazing land, but may also agree to provide care for the livestock, particularly if the livestock owner lives some distance away. In this event, it is important that the landowner and lessee be clear about what that care entails. For example, requiring "adequate hay" is insufficient as it is almost a certainty that the landlord's definition of "adequate" differs from the livestock owner's definition of the same term. In order to avoid this type of dispute, spell out the how the





landowner is to care for the livestock, including the type and amount of hay and feed to be provided, the type of mineral that should be available, the frequency with which the livestock should be fed and checked by the landowner, and any other services such as veterinary care, vaccinations, or animal health and welfare practices. An interesting term found in some of these types of leases provides an incentive for a landowner who provides superior care for the livestock. For example, the lease might state that if calves reach a certain average daily gain or a set weaning weight goal, the landowner receives a bonus from the lessee. Similarly, there could be a provision if the landowner is set to care for first-calf heifers that would include a bonus if there were a low death loss percentage. This type of incentive may help to ensure better care for livestock.

□ **Proof of vaccination:**

Require that the lessee provide the landowner with a health certificate declaring that cattle have received certain vaccinations, such as blackleg shots for calves or brucellosis vaccinations for cows and bulls.

□ **Breachy livestock:**

Include a provision whereby any animal known to be “breachy” (frequently escapes the pasture by jumping or breaking through fences) must be removed from the premises.

□ **Disaster contingencies:**

Consider how disasters such as drought or fire might impact the landlord/lessee relationship. In the event that all or some of the grazing land is destroyed, how will a determination regarding the lease be made?

Who decides if it is necessary to lower the number of livestock permitted on the property, or whether it is necessary to terminate the lease all together? Parties may want to agree on a neutral third party, such as a county Extension agent or another livestock operator in the area, to help with this determination. In the event that the lease is limited or cancelled, state whether a refund of any prepaid rent will be made.

□ **Transferability:**

Address the rights of the parties as to assignment or sublease. According to Texas law, a lease may not be assigned or a sublease granted without the written permission of the landowner, but this term should still be included in a lease agreement. Also, consider what happens to the lease if the landowner dies or sells the property. The parties may want to provide a clause stating that the lease shall be binding upon heirs or assigns or that the lease shall terminate upon the death of either of the parties.

□ **Lease does not create a partnership:**

Unless the landowner and lessee intend to create a partnership, expressly state in the lease that it does not do so. This provision is important because, generally, one partner is liable for the obligations and debts of the other partner. Under Texas law, two people operating a business for profit may form a partnership, even if they did not intend to do so. Although this type of provision, alone, will not prevent a partnership from being created in all circumstances, it does provide evidence that the parties did not intend to create a partnership arrangement.

□ **Effect of breach:**

Include a clause stating that the violation of any term, covenant, or condition of the lease agreement by the lessee allows for the landowner, at his option, to terminate the lease upon notice to the lessee. This provision allows the landowner the option of terminating the lease if any term is violated rather than merely having the right to sue the lessee for damages. If included, this clause should address the type of notice required to the lessee and whether any refund of payment or security deposit will be available.

□ **Damages to the property:**

Prohibit damage to the property and require the lessee to repair or pay for any damage caused, including the destruction of crops; death or injury to livestock; harm to fences, gates, or improvements; and trash or other debris left on the premises.

❑ Liquidated damages:

Consider including a liquidated damage clause, which essentially means contractually agreed upon damage amounts. These damages are often used in situations where the calculation of actual damages might be difficult. Instead, the parties agree up front to a set amount of damages for certain actions.

❑ Attorney's fees:

Include a provision providing that if the landowner is successful in a dispute (whether in arbitration or in court) with the lessee, the lessee will be responsible for the landowner's reasonable costs and attorney's fees. Generally, a successful litigant is not entitled to recover his or her attorney's fees from the other party unless authorized to do so by a contractual agreement or a statute. The lessee will likely request a reciprocal clause requiring payment of his or her attorney's fees if the lessee is successful.

❑ Lessee insurance:

Require the lessee to maintain liability insurance throughout the lease term and include the landowner as an "additional insured." This should offer insurance coverage to the landowner under the lessee's policy in the event of a claim made by a third party against the lessee and landowner. Also require a specific minimum level of coverage.

❑ Liability and indemnification:

Include liability and indemnification clauses in case the landowner is sued as a result of the lessee's conduct. These terms simply provide that the landowner is not liable for any action or inaction of the lessee, his agents, or employees, and that, in the event the landowner is sued for the lessee's actions or inactions, the lessee will hold the landowner harmless as to any attorney's fees or judgment.

❑ Choice-of-law:

Use a choice-of-law provision in a lease to allow the parties to determine which state's law will govern the lease in the event of a dispute. Generally, a court enforces choice-of-law clauses so long as they are not against public policy and are reasonably related to the contract. Choice-of-law provisions are particularly important when the landowner and the lessee reside in different states. Because many laws vary by state and a choice-of-law provision could significantly impact rights under a lease, consult with an attorney with regard to this provision to determine the potential

options available and which options would be most advantageous to the landowner.

❑ Forum clause:

Include a forum clause (provides that a dispute over a lease will be heard in a particular location or court) that requires any dispute over the lease be filed in the county where the land is located or the landowner resides, particularly if the lessee lives some distance away.

❑ Dispute resolution:

Evaluate the need for a dispute resolution clause. The purpose of this type of clause is to limit the time and expenses of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third party arbitrator (usually an attorney) hears evidence and renders a decision. If the arbitration is "binding," that judgment is final on the parties absent evidence of fraud or serious misconduct by the arbitrator. Mediation involves a neutral third party who will work with the landowner and lessee to attempt to reach a mutually acceptable resolution. If both parties refuse to agree to settle, the case then proceeds to court. It is important to understand the difference between these options and to consult with an attorney to determine which is best. A dispute resolution clause should identify how the arbitrator or mediator is selected.

❑ Confidentiality clause:

Use a confidentiality clause if there is any information the landowner does not want to be made public. For example, a landowner may not want the fee charged to one party disclosed if he or she intends to charge an increased fee to another party or in the future.



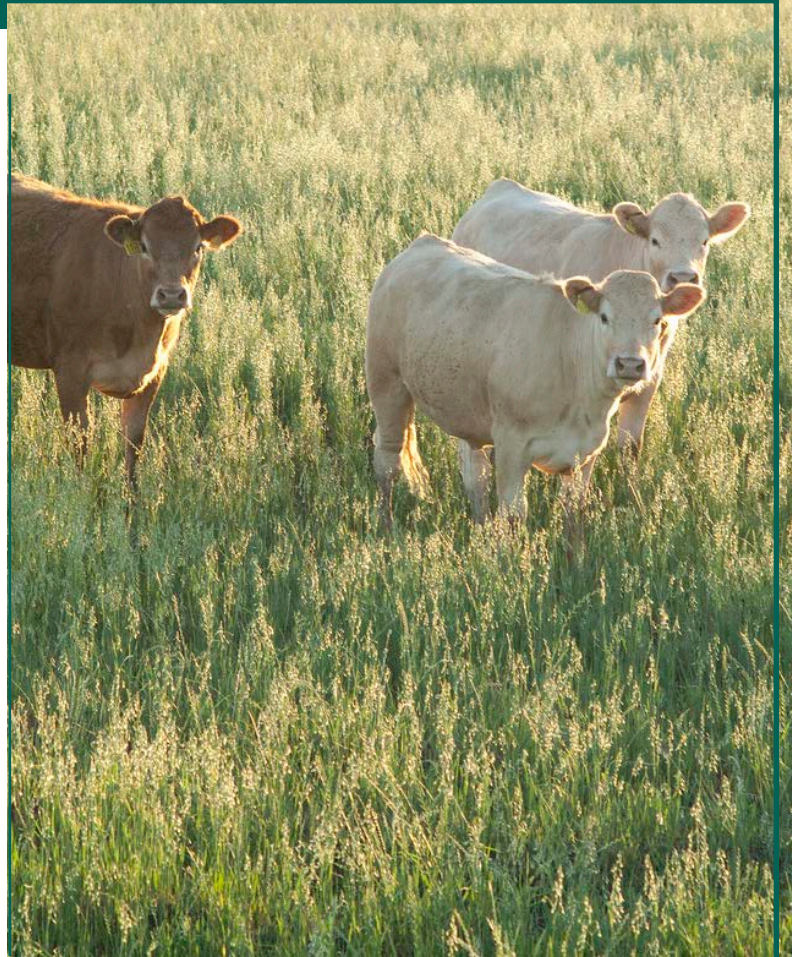
□ Sample leases:

There are many sample lease forms available online that may be useful in preparing an initial draft of a grazing lease. Here are links to a few examples:

- <https://www.extension.purdue.edu/extmedia/EC/EC-623.html>
- http://ohioline.osu.edu/fr-fact/pdf/0008_Lease.pdf
- <http://aglease101.org/DocLib/docs/NCFMEC-03A.pdf>

□ Money-saving tip:

Although it may be expensive, hire attorneys to review and approve all leases before they are executed between the landowner and lessee. Because most attorneys bill by the hour, a client can save considerable fees by doing as much legwork as possible before going to the attorney's office. For example, a landowner could have already collected necessary documents such as the legal description or sketch of the property to be leased, saving the attorney time (and being billed for time). Moreover, a landowner could prepare a first draft of the lease using this checklist and the sample leases referenced above. This would save the attorney the effort of starting from scratch and allow him or her to simply edit the draft prepared by the landowner.



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