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Common Ag Lease Misunderstandings

January and February is a time when people look at their financials for the year, mostly for taxes, but this often brings up conversations about agricultural leases as well. The majority of landlords and lessees know what the payment terms are for their contracts but don't realize that there are a number of other inherent terms in the contract as well, ones that are formed by the lease laws of Kansas.

Although there are great number of misconceptions when it comes to agricultural leases in Kansas, there are three common ones that have less to do with rates and dates of the contract and more to do with what does an agricultural lease contract entail.

Landlords Entering Property

An agricultural lease represents the tenant having an estate in the land for a specific period of time and it's not entirely unlike an apartment lease. If you covered your apartment in posters of Wham! and Duran Duran, and your landlord hated new wave bands of the 80s, that doesn't mean he could come in unannounced and take them down. In an agricultural lease, unless otherwise stated, the decision of production is up to the tenant. However, that doesn't mean doing something unfavorable won't result in losing the lease for next year. A landlord can really only enter the property for a few reasons like to make inspections, conduct repairs, collect rent, and show to land to potential buyers (if selling). This makes the decision to lease part of the ground out to gas wells or wind turbines one that is between the tenant as well, unless otherwise specified in a written contract. However, in good fashion, most tenants should be ok with a landlord driving across the land if crops or the ground is not being damaged.

Hunting Rights

Many people are confused by hunting rights when it comes to leased ground. Dr. Roger McEowen, law professor with Washburn University states, "The landowner cannot hunt on the leased ground without the permission of the tenant unless the landowner retained these rights in a written lease." And Dr. McEowen says that this includes crop share leases as well. However, this does not give the tenant the ability to lease the hunting rights of the ground out to an outfitter or anyone else, as this would be a sublease. Really this needs to be a conversation if the landlord, or the tenant, would like to hunt the ground. Many soybean crop farmers would probably prefer a few more dead deer. Hunting rights is one of the terms that every written agricultural contract should have, even though the vast majority don't.

Firewood

Firewood and hedge posts is another one that sticks in between lease understanding and for this one there is no direct answer. It's more complex as trees are part of the leased ground but also part permanent fixture of the land. The cutting of firewood question goes to the direct overall purpose of the lease. "The scope of a farm lease would not, without explicit authorization from the landlord, include cutting timber to make way for more farm ground. Nor would it include the consumption of the leased land (e.g., the cutting of wood) for fuel, etc." states Dr. McEowen. If it's not scrubby valueless brush in the way of the farming operation, then it is outside the lease. Earlier it was stated that an agricultural lease represents an estate in the land, but that is not to say that a lease means "ownership" of the land beyond a leaseholder interest. This is another point of conversation between landlord and tenant and would also be a good idea to have in any written or oral contract. Most landlords will be ok with a farmer or rancher cutting up a naturally dead tree or taking out a valueless one over hanging a crop field, just be sure to ask first.

This same goes with being careful with herbicide use as well. Controlling brush in a pasture is a responsibility of the tenant but be sure to know how and what you are spraying. Many chemicals, especially ones like Picloram (Tordon, Grazon P+D, Remedy Ultra), can travel through roots or maintain persistence in the soils to be picked up by non-target trees. For crop farmers, most large trees can stand up to crop herbicides, but I have personally seen huge trees of various species with what looked like overdrift herbicide damage.

Like with any lease complication, it all comes down to a conversation. If a landlord or tenant wants to use the land for something outside the scope of the farm lease, then permission from both parties needs to be agreed upon. Once again, I will say that I am not a lawyer, but you need any help with your agricultural lease or need help understanding Kansas lease laws, please give me a call at 620-724-8233 or email jcoover@ksu.edu.

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