Leasing Consideration in Recreation

Special Report 298

June 1970
Foreword

The U.S. Department of Agriculture through its Cooperative Extension Service is searching for ways to raise the level of income for the landowner and to extend his opportunities for employment. There is an increasing demand for outdoor recreation and a need for acceptable facilities to satisfy this demand. Many facilities will be developed on private land since there is a considerable amount of undeveloped land near metropolitan centers and much of this is privately owned.

Leasing land for recreation homesites or other recreation activities has proven successful in several cases in Oregon. Using this kind of technique the landowner may retain his land and control plus derive an annual source of income. Special services, facilities and controls can be taken care of in the lease. But most importantly, the quality of the environment can be preserved through the proper leasing control.

This publication is intended to help you recognize the questions you need to ask if you wish to lease and if so, how to best go about preparing a lease. By understanding some of the items listed in this publication, the landowner will be far better prepared to discuss this matter with a qualified attorney. Legal counsel should be consulted if you intend to prepare or enter into a lease agreement.

If after completing this publication you need additional assistance, contact your County Extension Agent. Assistance is also available through the Soil Conservation Service, Farmer's Home Administration, Forest Service, Agricultural Stabilization and Conservation Service, State Highway Department, State Parks Division and the State Game Commission.

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Leasing Consideration in Recreation 1/

Leasing is a useful device for a landowner who wishes to start a Recreation business. This applies to the landowner who needs additional acreage as well as one who wishes to lease for additional revenue.

Before getting into detail, this author wishes to strongly recommend that you enlist a qualified lawyer to draft any legal lease agreement. The small fee he charges could save you money and embarrassment in the long run. Each agreement will have provisions particular to that one situation. Therefore, the considerations listed below are not intended to be all-inclusive or applicable in every case.

Owner's of real property may permit others to have exclusive possession of the property by an expressed or implied contract known as a lease. Like any other contract, a lease must be made for a plausible purpose. A lease may run for a specified period of time in accordance with the agreement of the parties, such as three months, one year, 21 years, or some other period.

There is no required form of lease. The agreement may be expressed in any words that clearly indicate the intention of the parties. Generally, a properly prepared lease should contain; (1) a description of the property, (2) the term or length of time the lease is to run, (3) the amount of the rent, (4) when the rent is to be paid, (5) the date the lease is to commence and (6) the signature of the parties.

In addition to the foregoing, leases generally contain statements or clauses giving the party certain legal rights and imposing upon them various legal obligations. These clauses are technically known as covenants or conditions. Some of the more important conditions commonly inserted in

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leases relate to:

1. **Repairs.** In the absence of a special condition in the lease, the tenant must make ordinary repairs and must surrender the premises at the expiration of the term of lease in as good a condition as they were in at the commencement of the lease, reasonable wear and tear and damage by the elements excepted. (may include planting of trees)

2. **Assignment and subletting.** In the absence of a prohibition in the lease, the tenant may assign his lease or may sublet all or part of the premises. When a tenant assigns his lease, he transfers his entire interest in the premises to another person who becomes liable to the landlord. However, the tenant remains liable to the landlord for the faithful performance of the lease by the assignee.

When a tenant sublets the premises, he transfers something less than his entire interest to another person. He remains liable for the performance of his contract with the original landlord. The sublease does not become liable to the original landlord.

Sometimes a lease will provide that a tenant may not assign or sublet a lease without the written consent of the landlord.

3. **Eviction.** In making a lease, one of the conditions which a landlord makes with his tenant, either expressly or implied, is that the latter will enjoy undisturbed possession of the premises. A breach of this condition is known as an eviction. The legal effect of an eviction is that the tenants may consider the lease terminated and may rightfully cease paying rent. In addition, they may bring an action against the landlord for breach of the condition of quiet enjoyment of the premises.
4. **Renewal of the lease.** Automatic-renewal clauses are generally inserted in leases. Tenants who fail to read their leases often learn to their regret that they are bound for another term. Because of the hardship which such clauses may impose upon unsuspecting tenants, the landlord should give the tenant written notice, either in person or by registered mail, prior to the time the tenant must notify the landlord, that the lease contains an automatic-renewal clause.

5. **Holdover.** The specified period of tenancy ends without notice on the last day of the term of the lease. If the tenant continues in possession, he is a holdover. The tenant is generally not a holdover when he is prevented from moving by illness or by some other cause beyond his control.

6. **Rent.** The tenant's chief obligation is to pay the rent, which is usually a defined sum, payable at a specified time. Leases usually provide that the rent shall be paid in advance, but if they are silent on the subject, the rent is payable at the end of the period.

7. **Fire Clause.** A lease generally provides that the tenant shall give the landlord immediate notice of any fire, and that the landlord must repair the damage as immediately as possible. If the tenant remains in possession, the rent continues regardless of the fire, but if the damage is such that the tenant is compelled to move, the rent ceases until such time as the property is restored to its former condition. If the building is totally destroyed by fire, the lease ceases, but rent is due up to the time of destruction.

8. **Security Deposit.** A landlord may require a tenant to furnish security for the faithful performance of the lease. This security
deposit may be in the form of cash or negotiable securities, or may be in the form of a bond issued by a surety company. Under the common law, the deposit of security with the landlord remains the property of the tenant, and the landlord may not regard it as his own unless the lease authorizes him to do so.

9. Fixtures. If a tenant makes any improvements in the leased premises of such a nature that they are attached to the premises and cannot be subsequently removed without causing substantial injury to the property of the landlord, the law will consider these improvements as fixtures and will not permit the tenant to remove them upon termination of the lease. Such fixtures become a part of the realty and, in the absence of a provision in the lease to the contrary, become the property of the landlord. To prevent any misunderstanding, a tenant should insist on a clause in the lease to the effect that any improvements made by him are to be regarded as his personal property and not the property of the landlord. In such a case, the fixtures could be removed by the tenant prior to the expiration of the term of the lease. If not they may nevertheless become the property of the landlord.

Other rights of the landlord:

The landlord has the right to enter the premises in order to demand payment for rent; generally, he also has the right to show the premises to prospective tenants. If the tenant abandons the premises, the landlord may enter them for the purpose of taking care of them. The landlord has the right to recover for damages to the premises, unless the damages are the result of normal wear and tear.
Other rights and liabilities of the tenants:

The tenant having possession of the premises must use them in accordance with the terms of the lease. He must not commit waste, that is, injure the property permanently. At the expiration of the lease, the tenant must remove his personal property and return the premises in the same condition as that in which he received them, ordinary wear and tear or destruction beyond his control excepted.

A tenant who has exclusive possession of the premises is ordinarily liable to third parties for injuries caused by the defective condition of the premises.

Termination:

A lease, like any other contract, is generally terminated by the expiration of the period specified in the contract. Death of the landlord or tenant does not ordinarily terminate the contract. Leases are also terminated by:

1. Agreement
2. Breach of the lease by either party.
3. Destruction of the premises by fire.
4. Operation of the law, as when the State exercises the right of eminent domain, or when the specified use of the premises becomes unlawful.

Example of private forest land lease agreement:

For the sake of general information an example of the general consideration provisions for a seasonal-hunting lease would be as follows:

1. Names of parties and description of tract. (Good idea to attach a map of the area.)
2. Duration in terms of lease.
   A. Starting and ending dates of lease.
B. Clause to provide for automatic renewal.

C. Payment and rate.


A. Clause to provide arbitration in case of disagreement.

B. Reserve specified hunting privileges for landowner, his family, or guests.

C. Clause spelling out what services and facilities landowners will provide: cabin, jeep, guide services, campsite, water, sanitary facilities, road maintenance, firewood, etc.

D. Spell out number of people (maximum) allowed (if a hunting club.)

E. Clause providing for cancellation of lease by landowner and no refund of money to leasee if leasee breaks lease conditions.

F. Define responsibility for posting, patrolling, and handling of trespass cases.

G. Clause giving owner right to recover reasonable attorneys' fees if it becomes necessary to enforce conditions spelled out in agreement.

H. Spell out game management practices.

   1. Weapons to be used (rifles, shotguns, bows and arrows).
   2. Hunting methods: Use of dogs, still hunting, etc.
   3. Species of game and predators to be hunted.
   4. Number of species to be harvested per day of hunting and season limit.
   5. Extent of habitat development and how cost to be handled.
   6. Require leasee to record and report to landowner game killed or fish caught by species, age, sex and number.

I. Designate road use, vehicle use, gate closing, disturbance
of livestock, in shooting toward or near ranch buildings.

J. Clause wherein leasee agrees to abide by all State and Federal hunting and fire regulations.

K. Spell out campfire use.

1. Open fire permissable during rain season.

2. Charcoal, gas, or butane stoves in designated areas only during dry season.

L. Insurance--Spell out amount of liability and property damage insurance to be carried and by whom (Often leasee takes out insurance to protect landowner).

M. Where in conflict on the leasee-rights subject and subordinate to other ranch operation at discretion of landowner.

N. Leasee not to assign or transfer his interest and agreement without owner's written consent.

O. Additional provisions. Who pays property tax and protection fee.

P. Who pays Federal recreation tax on ownership of timber.

4. Testimony.

Signature of Landowner ____________________________

Signature of Leasee ______________________________

Signature of Witness ______________________________

A lease can be a fine tool for the landowner....or it can be a curse. Take the time to do it right; you won't be sorry and your leasee will respect you for it in the long run.

Private recreation is a business so run it as one....you can't afford not to.
Sample Lease For a Private Outdoor Recreation Club

This agreement, made this _____ day of __________, ________, between __________________________, of town of __________________________,
county of __________________ and State of ______________________, party of
the first part, and ______________________ party of the second part.

Witnesseth, that said party of the first part does hereby lease to the said party of the second part, the following described property situated in the town of __________________________, county of __________________________ and state of __________________________, to be used by said party of the second part only as a recreational area:

(Description of area)

Reserving, however, to said party of the first part the right of ingress egress, and use of said described property for fishing and other recreational purposes for himself, his children, members of his immediate family and his and their house guests; and also reserves the right to draw water from said lake through pipe or pipes for use of livestock on other lands belonging to party of the first part or his children.

To have and to hold the same to said party of the second part, from __________________________ to __________________________.

And the party of the second part, in consideration of the leasing of the premises as above set forth, covenants and agrees with the party of the first part, to pay the party of the first part, at his residence, as rent for the same the following:

The sum of __________ on execution and delivery of this lease,
The party of the second part covenants and agrees with the party of the first part as follows:

1. That they will not assign or sublet said premises or any part thereof without the written consent of the party of the first part.
2. To make all improvements on said premises at their expense.
3. To purchase and pay for insurance which will, by its terms, protect and save harmless and indemnify party of the first part for any and all liability to the public or other persons in the use of said property, in a sum not less than ____________________.
4. To comply with the terms and provisions of any and all agreements entered into by and between the party of the first part and the county Soil Conservation District in creating and constructing said lake.
5. To make all improvements and build all roads, docks, and toilet facilities at their expense.
6. To provide their well, or wells, telephone and electrical services at their expense.
7. To pay the taxes on improvements placed on said property.
8. To prohibit the use of said lake of motors powered by gasoline.
9. To prohibit training of dogs at night.
10. To restrict the use of firearms to an area agreed to by the parties to this lease.
11. To prohibit hunting upon said premises.
12. To keep the premises in a clean and sanitary condition and dispose of all rubbish.
13. To maintain and keep fences adjacent to said lands and belonging to the party of the first part which party of the first part would be obligated to maintain in proper repair.

14. To properly police the premises and require members to obey the laws of the state of ____________________, in the use of said property.

The party of the first part convenants and agrees with the party of the second part as follows:

1. That on or before ____________ days prior to the expiration of this lease, he will submit a proposed lease in writing to said party of the second part for their approval or rejection. Party of the second part will have ____________ days, after presentation of proposed lease in which to signify in writing their acceptance or rejection of said proposed lease.

2. That the party of the second part, at the end of said lease, shall have the right to remove any and all improvements made upon said property during the term of this lease, provided the premises are restored to their former condition.

The parties hereto further covenant and agree that in the event that the dam creating said lake is washed away and as a result said lake is drained and the premises made useless for recreational purposes, it is agreed:

1. That the party of the first part shall not be obligated to rebuild said dam.

2. That the party of the second part shall be reimbursed in a sum equal to the unused portion of the rental for the year in which
said lake is made useless.

3. That the party of the second part will upon restoration of said dam pay rent for said premises upon the terms and conditions provided for in this lease.

The parties hereto further agree that in the event the rent, or any installment of rent, be not paid within _________ days of the due date, as fixed by terms of this lease, that the failure to pay such rent shall be deemed by the parties as a breach of contract and that said lease, as a result thereof, shall be considered terminated and in that event, the party of the second part will surrender and deliver up possession of the premises immediately without further notice or demand.

The parties hereto further agree that this lease shall be binding and obligatory upon the heirs, executors, administrators and assigns of the respective parties hereto.

In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

________________________ (seal)

(party of first part)

________________________

(party of second part)
Sample Lease For A
Private Hunting Club

This lease made in the County of ____________, State of ____,
this ____ day of ______, 19__, by and between ________________,
hereinafter referred to as the Lessor, and ________________,
hereinafter referred to as the Lessee.

Witnesseth:

1. The Lessor, for and in consideration of the agreements of
the Lessee hereinafter mentioned, hereby leases to the Lessee a part
of the premises located on the Northeast corner of the Lessors farm
in the County of ________________, State of ____________,
described as follows:

2. The Lessor leases the above described premises to the
Lessee for the period of One (1) Year from the above date, with an
option to renew the lease for the same period and the same fee,
for the purpose of a ________________ club and agrees that the
Lessee may:

a. Have sole and exclusive use and game rights of the
premises;

b. Use, build, construct, plant, improve, alter, erect
or repair any kind of trees, structures or bodies of water for club
houses, docks, roads, walks, water dams, fishing areas and such other
items and purposes as will enhance the value of or benefit the purposes
of the club.
c. Operate the club at any and all hours of any day in the year throughout the term of the lease for the benefit and entertainment of its members and invited guests.

d. Allow the use of alcoholic beverages to the club members and their invited guests.

e. Hold any kind of sports event, show, or contest for the benefit of its members or invited guests.

f. Stock, kill or otherwise dispose of, or raise any and all kinds of game animals, fish and fowl for the benefit of the club members and their invited guests.

3. The Lessor retains the right to enter on the premises or any part thereof at all reasonable hours for the purpose of making inspections, repairs or alterations as may be necessary for the safety or preservation thereof.

4. The Lessor agrees to lease the exclusive use and game rights of said premises to the Lessee for the aforementioned period for the sum of _______________ rent annually.

5. The Lessee, in consideration of the aforementioned agreement of the Lessor, agrees:

a. To lease the previously described premises for the purpose and period aforementioned from the Lessor, and agrees to pay the sum of _______________ annually for the exclusive use and game rights thereof.

b. To maintain such premises, buildings, structures of any nature, roads, bodies of water and water dams in a manner as to not be a nuisance or cause injury to the Lessor, his property, or other adjacent property;
c. To conduct all activities, sports events, contests and entertainment in a moral and legal manner;

d. Not to sell, assign or otherwise dispose of this lease except to the successor corporation of said Club, unless the same shall be satisfactory to the Lessor;

e. To pay all costs of construction and labor contracted for by said Club, and not to make any contracts for construction, repairs or improvements in or on said premises without providing in such contracts or agreements that no lien of mechanics or materials shall arise or be created against the above described premises;

f. At all times during the term of this lease or any extension thereof, the Lessee agrees to keep in full force and effect good and sufficient liability insurance, covering the use of all said premises for any purposes for which the said premises are herein leased, and covering in full any and all liability for damages or injury of every nature and description to any person or persons who shall be upon said premises at any and all times and to save and keep the Lessor harmless from any and all damages of any nature or description on account of the use of the premises leased herein;

6. The lease may be terminated by either the Lessor or the Lessee by giving to the other written notice Sixty (60) days prior to the anniversary date of the lease, stating the intention to so terminate the lease, and that upon termination any improvements placed on the land by the Lessee of any kind or nature, whether of personal, mixed or real property may be removed by the Lessee or sold to the Lessor at a price satisfactory to both parties.
7. No reduction in the amount of fish contained in the lake, except by normal fishing, shall be made by the Club or its Members without express permission of the Lessor.

8. The parties to this lease agree that the agreements and conditions of this lease shall be binding upon their representatives, members, successors and assigns.

In witness whereof, the parties have subscribed their names and/or seals on the day and year mentioned above.

As Lessor____________________

As Lessee____________________