




## Negotiating and Drafting Grazing and Hunting Leases

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## Disclaimer



This presentation is for educational purposes only as well as to give general information and a general understanding of the law, not to provide specific legal advice. This presentation does not create an attorney/client relationship and should not be used as a substitute for the advice of a licensed attorney.

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## Road Map

- Why is a written lease necessary?
- Setting payment rates
- My father's favorite section
- Grazing lease tips
- Farm lease tips
- Hunting lease tips

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## Why is a written lease necessary?




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## 1. The law says so...sometimes.

- Generally, an oral contract is valid under TX law.
- The "Statute of Frauds" says there are certain contracts that must be in writing to be enforceable:
  - Contract for the sale of real estate.
  - **Lease of real estate lasting one year or more.**
  - Agreement not performed within a year.
  - Loan agreement exceeding \$50,000.
  - Agreement to pay commission for the sale or purchase of oil or gas lease or royalty, minerals, mineral interest.
  - Sale of goods or services for more than \$500.
  - Agreement made in consideration of marriage.



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2. The exercise of writing it down is helpful!



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3. If you end up in court, you want a written document.



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4. A tenant may want to record a lease in the county records.

- No requirement that a lease be recorded.
- Why would a tenant want to do so?
  - Puts people on notice that lease exists
  - If property changes ownership during lease term:
    - Lease controls
    - Lease continues if the new purchaser is put on notice.
      - Actual notice
      - Constructive notice
      - Record notice.

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5. You never know what might happen.



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Calculating Payment



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Three Most Common Arrangements

- Cash lease
- Crop share lease
- Flex/Hybrid lease
- NOTE: Your choice here may impact you other places like the FSA office, with the IRS, and when it comes to your social security check!

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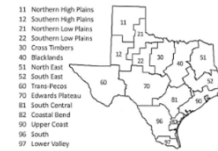
## How much should I charge?

- Really depends on the facts.
- Talk to CEA, landowners, producers in your area.
- Numbers from the Government
  - 2017 Texas state averages from USDA/NASS:
    - Pastureland: \$6.60/acre
    - Non-irrigated cropland: \$28.00/acre
    - Irrigated cropland: \$87.00/acre

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## How much should I charge? (cont.)

- 2017 Northern High Plains Region
  - Pastureland: \$7.20
  - Non-irrigated cropland: \$31.50
  - Irrigated cropland: \$139.00
- 2017 Blacklands
  - Pastureland: \$13.50
  - Non-irrigated cropland: \$23.00
  - Irrigated cropland: \$65.50
- 2017 Edwards Plateau
  - Pastureland: \$3.30
  - Non-irrigated cropland: \$14.00
  - Irrigated cropland: \$63.50



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**Southern Grand Prairies**

Land Use or Class	Value Ranges	Activity/Trend	Rental Range	Activity/Trend
Dry Pasture	\$1,000 to \$2,000	Steady/Flat	\$10 to \$20	Steady/Flat
Improved Pasture	\$1,500 to \$3,000	Steady/Flat	\$15 to \$30	Steady/Flat
Non-Irrigated Cropland	\$1,000 to \$2,000	Steady/Flat	\$10 to \$20	Steady/Flat
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Timberland	\$10,000 to \$20,000	Steady/Flat	\$100 to \$200	Steady/Flat
Woods	\$10,000 to \$20,000	Steady/Flat	\$100 to \$200	Steady/Flat
Urban	\$10,000 to \$20,000	Steady/Flat	\$100 to \$200	Steady/Flat

**Central Basins**

Land Use or Class	Value Ranges	Activity/Trend	Rental Range	Activity/Trend
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**Central Blacklands, Grand Prairie and North Central Post Oaks**

Land Use or Class	Value Ranges	Activity/Trend	Rental Range	Activity/Trend
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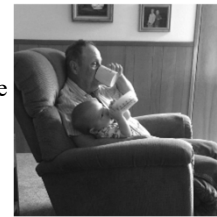
**East Edwards Plateau, Central Blacklands, and Southern Post Oaks - Austin Area**

Land Use or Class	Value Ranges	Activity/Trend	Rental Range	Activity/Trend
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## My Father's Favorite Section

- Assignment/subleasing
- Forum clause
- Dispute resolution clause
- Attorney Fee provision
- Liability clause
- Indemnification clause



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## Grazing Lease Pointers



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## 1. Set a stocking rate.

- Landowner wants this term, tenant may not.
- Size of animals—consider animal unit measurement.
- This number may need to change based on drought or wildfire...

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## 2. What may be done on the property?

- If limitations are not included, they do not exist.
- State that lease is for grazing cattle/sheep only.
- Are any areas that are off limits to the tenant?
- Save yourself a tense situation in November....

## 3. Maintenance of fixed assets.

- Who will maintain during lease term?
- Fences—require periodic inspection and immediate repair if damage.
- Landowner—generally not liable for injuries during lease, but can be liable for failing to make promised repairs or making inadequate repairs.

## 4. Let's talk mineral estates.

- Is there a mineral lease in place or being negotiated?
- Mineral estate (and now groundwater estate) is the dominant estate in Texas.
- The mineral owner has the right to use as much of the surface estate as is reasonably necessary to produce oil and gas.
- Terms in the mineral lease itself can change/limit this right, but it could really impact a tenant.
- Consider a term that allows tenant the right to cancel lease and get pro rata refund if mineral production occurs.

## Hunting Lease Pointers



## 1. Require EVERYONE to sign lease and waivers.

- Cannot terminate lease or sue for breach of contract unless person was a party to the lease itself.
- Consider a term allowing only lessee to enter and require any other parties be approved in writing by the landowner.
- Obtain written releases prior to them entering the property.
  - Standard waiver of liability (express & conspicuous)
  - Language from Agritourism Act

## 2. Limitations on hunting methods.

- Can they use tree stands? Deer blinds?
- Certain types of weapons prohibited?
- Can ATV's be used on the property?
- Which brings up a good point...insurance.
  - Most common insurance claim related to hunting?
  - Second most common?
  - Be sure your liability policy provides coverage for hunters on the land.

### 3. Describe leased property & limitations.

- Consider including a map clearly showing leased land and any important areas.
- Where should property be entered?
- Will anyone else have rights?
- Consider requiring a security deposit in case there is damage.



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### 4. Require lessee to follow all state and federal laws.

- Why should this be in the lease?
- If they break the law, they have breached the lease and you can recover damages.
- If you want the right to automatically terminate the lease, use the magic words "...or the lease shall terminate."

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### 5. Hunting License Requirement

- Landowners entering into a hunting lease (obtaining anything of value) must get a license from TPWD each year.
- Not having one is a Class C misdemeanor, faces up to \$500 fine.
- Three types of licenses:
  - Hunting lease license available where hunting/fishing licenses are sold or can be bought online.
  - Cooperative license (landowners pool property) must get at TPWD offices.
  - Wildlife management association (contiguous land where observing and collecting info is helpful) license must get a TPWD offices.



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### 6. Study up on Statutes

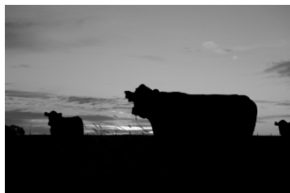
- Texas Recreational Use Statute
  - Land ("ag land" better)
  - Plaintiff there for recreational purpose (includes hunting)
  - One of the following 3 monetary options:
    - You don't charge a fee
    - Your fees from last year are not more than 20x your total property taxes
    - You carry insurance of at least \$500K/person; \$1M/occurrence; \$100K property damage.
- Texas Agritourism Act
  - Plaintiff there for recreational or educational purpose
  - Applies to all ag land
  - Either hang up a sign OR get signed release language



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### Additional Resources

- Ranchers' Agricultural Lease Handbook
- Ag Lease 101 Website ([aglease101.org](http://aglease101.org))



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<http://agrilife.org/texasaglaw>



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Thank you!



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