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A ‘Fair’ Land Lease

When it comes to estate planning, the following scenario happens entirely too often. A (mostly) retired farmer or land owner dies, the estate is settled, and then the surviving family have no idea what the leases of the farm ground are. They don’t know the terms, the rental rate or the crop share percentages, and sometimes not even who was the last person leasing the land. They are left scrabbling in a quest of who, what, when, where, and mostly importantly, how. Often, the land in question has long been leased and everyone has already moved away from what was once the family farm. The next generation has a general understanding of farming, but has little concept of farming financial details. In the end, the family wants to know what is fair to the leasing farmer, but still make the most rent or crop share profit.

What’s in a good lease? If at all possible, the first step in creating an agriculture lease is to know what lease is currently held. To get this information, you will have to ask the person who made the lease what are the contract details. If you are that person, then do your family a favor and write them down. If you’re lucky the details are already down in a written contract. Whether writing down a verbal contract or starting over with a written contract, the following contract details are important.

- **Contracting parties:** This might seem simple but often farmers have shared operations and land can be owned by multiple family members. A land contract is not automatically transferred when a farmer retires and the farming partner takes over.
- **Property Description:** The legal boundaries can be determined at the county deeds office and is required for a proper contract.
- **General Terms of the Lease:** Pretty cut and dry terms like dates on contract, no subleasing, right of entry, etc. It is important to detail hunting rights, road and fence repair obligations as well.
- **Payments and Due Date:** Payments if cash rent and the date in which payments are to be made by.

- Land Use: This is the meat and potatoes and by far the biggest part of the contract. This will be the hardest part for people not familiar with farming. Especially in crop share agreements as it will contain the percentages; expenses and income. Sometimes a landlord will designate a specific practice such as cover crops, tillage, or conservation practices.
- Maintenance: Who is responsible for fencing, conservation, noxious weeds, repairs and general maintenance.

Examples of ag contracts can be found on agmanger.info or other state's extension websites. Even though many are fill in the blank, it is ideal to have a legal professional look them over.

What is a 'fair' lease? Determining 'what is fair' for a cash rent or for a crop share can be a more difficult question. Data is collected from yearly surveys to determine average cash rents and these can be a starting point. However, the data doesn't differentiate between land types; upland or bottom land, native or fescue, or state of condition. Also, not many people turn the surveys in so rental rate averages are sparse and variable. For crop share, the question is who pays for what and in what percentages. The majority of crop share contracts in southeast Kansas are on a 1/3rd: 2/3rd basis. Data from surveys about leasing agreements was collected last year. 75 to 100 percent of the 1/3rd: 2/3rd contracts spilt fertilizer costs, depending on crop type. Splitting herbicide cost was more common in soybeans and wheat than it was in corn, and splitting insecticide cost was less common in each crop type.

Looking at the arrangements from the rest of the state, splitting of fertilizer and herbicide costs is common in 1/3rd: 2/3rd agreements. However, for 60/40 and 50/50 arrangements, nearly all also spilt fertilizer, herbicide, and pesticide on that percentage. This makes sense because the landlord should cover more costs as they receive a higher percentage of the crop. The surveys didn't ask about liming costs, which are often spilt 50/50 by landlord and farmer, no matter the crop share percentages.

In the end, what is fair is subjective, and the data that we use to determine what is common isn't always statically robust because so few turn in the land use surveys. Forming a good written lease and telling family members about the lease details will always be helpful later on. Statistics on rental rates, crop share agreements, and blank contracts can all be found K-State's extension economics website, agmanger.info.

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