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Kansas Agricultural Lease Law

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Overview

Kansas does not have detailed legislation governing the rights and duties of farm tenants and landlords, although statutes exist setting out rights and duties under residential leases. The Kansas statutes dealing with farm leases are limited to matters such as termination of tenancies, assignment of leases, landlord's lien for rent, and duty to control noxious weeds. Where common-law rules remain in effect, they concern such things as removable fixtures, permanent improvements, rights of entry for a landlord or new tenant, lease termination, rights of the tenant to harvest crops after the lease expires, and liability for rent in case of a natural disaster. A lease is both a conveyance of an interest in real estate (the right of possession) and a contract. As a result, the legal issues concerning agricultural leases can be broken down into property law issues and contract law issues.

Property Law Aspects of Leases

The right of possession. An agricultural lease represents an estate in land for a definite period of time that is fixed in advance. The property interest that is conveyed to the tenant is the right of possession. During the period of the tenancy, the owner of the land cannot use the land for the landowner's own purposes. For example, the landowner cannot hunt on the leased ground without the permission of the tenant unless the landowner retained these rights in a written lease.¹ Basically, the tenant has the right to make the decisions pertinent to farming the property, including the crops that are to be planted, without input or interference from the landowner (unless, of course, the lease is in writing and specifies otherwise), and shoulders the associated responsibilities (such as the responsibility to maintain fences).² However, the landowner may enter the premises to make reasonable inspections, make repairs and/or installations, show the premises to prospective buyers, collect rent, and deliver notice of termination to the tenant.

¹ However, as a practical matter, the tenant may not be allowed to continue the lease in the future if the tenant does not allow the owner to hunt.

² See, e.g., *Reynolds v. Kansas Dept. of Transportation*, 43 P.3d 799 (Kan. 2002) (wrongful death action brought against state, landlord, and tenant for death from automobile accident with tenant's cow on roadway; landlord dismissed from lawsuit).

If the landlord may be interested in pursuing mineral exploration or oil and gas drilling, the farm lease should be in writing and contain a provision allowing the landowner (or the landowner's agents or employees) to enter and use the land for mineral exploration or oil and gas drilling.

Tenant's rights to harvest crops. An emblement is a crop growing on the leased premises, and the "doctrine of emblements" gives the tenant (or the tenant's estate) rights to the growing crop if the land is sold or the tenant dies before the crop is harvested. Relatedly, an "away-going crop" is a crop that is growing upon termination of a land lease. Thus, if a tenancy ends without the fault of the tenant before a growing crop is harvested, the tenant is entitled to the tenant's share of the crops upon harvest. An exception exists, however, if the lease has a fixed expiration date and the crops cannot be harvested before the expiration date. Generally, in a landlord-tenant setting, growing crops are considered the tenant's personal property absent a written agreement to the contrary. Thus, if the tenancy is terminated after crops have been planted, but before harvest, the tenant is entitled to harvest the crops. But the tenant is protected only if the lease is terminated by the landlord and not because of any action of the tenant. Also, the rule has no application when a written lease is involved specifying the termination date of the lease. But, in *Meairs v. Watson*,³ the parties executed a cash rent farm lease with one-half due after wheat harvest by July 15 and the other half due by December 15 annually. The lease specified that it ran from May 2, 2006 to December 31, 2011. In the spring of 2011, the surviving spouse landlord notified the tenant in writing that the lease was ending on December 31, 2011 and that no fall-seeded crop should be planted. Normally, that would be the end of the discussion. However, the written lease contained language stating that the landlord gave the tenant "peaceable possession of any land upon which crops are growing in the year of termination through and including the harvest thereof...". The tenant planted wheat in the fall of 2011 and harvested the crop in June of 2012. The landlord sued on the basis that the lease terminated at the end of 2011 and the tenant was on notice not to plant a fall crop. While the trial court agreed, the appellate court disagreed, noting that the lease clearly stated that the tenant had the discretion to plant whatever crops the tenant wanted during the term of the lease and the ability to harvest those crops.

The doctrine of emblements may also be involved when the landlord dies during the term of the lease and a growing crop exists. Entitlement to the crop is fairly clear when the landlord owns a fee simple interest in the leased land — the landlord's heirs succeed to the landlord's share of the crop. However, if the landlord owns less than a fee simple interest in the leased land (such as a life estate), the outcome may be different. The question is whether the deceased landlord's estate or the holder of the remainder interest is entitled to the landlord's share. In two 1977 Kansas cases,⁴ the landlord owned only a life estate interest in certain farm ground and leased it on shares to a tenant. The landlord died before the growing wheat crop was harvested, and the court held that the landlord's crop share was a personal asset of the landlord, entitling the landlord's estate to the landlord's crop share on the basis that growing crops are personal property. The remainderman takes nothing. The Nebraska Supreme Court has reached a similar conclusion.⁵ However, the Colorado Supreme Court has held that the remainderman was entitled to the landlord's share on the basis that the language in the deed creating the reserved life estate in the decedent had divested the estate of any rights to profits from the crops.⁶ The Oregon Court of

³ No. 111,114, 2015 Kan. App. Unpub. LEXIS 52 (Kan. Ct. App. Jan. 23, 2015).

⁴ *Finley v. McClure*, 222 Kan. 637, 567 P.2d 851 (1977); *Rewerts v. Whittington*, 1 Kan. App. 2d 557, 571 P.2d 58 (1977).

⁵ *Heinold v. Siecke*, 257 Neb. 413, 598 N.W.2d 58 (1999).

⁶ *Williams v. Stander*, 143 Colo. 469, 354 P.2d 492 (1960).

Appeals has followed the Colorado approach on the basis that title to growing crops is in the lessee, rent is not due until harvest (under a crop share lease) and upon harvest the remainderman has a present interest in the land.⁷ Some states have statutes governing the apportioning of rent when a life tenant landlord dies with a growing crop in the ground. For example, in Illinois, the landlord's estate is entitled to the portion of the rent that accrued before death, and the remainderman is entitled to the balance.⁸

Of course, parties to an agricultural lease can avoid the application of the doctrine of emblements or the away-going crop doctrine by entering into a written lease that contains language addressing the issue.

Duty to control noxious weeds. Under Kansas law, absent a provision to the contrary in a written lease, the party who either owns the land or supervises its use has the duty to control noxious weeds.⁹ So both the tenant and the landlord are responsible for noxious weed control since, during the lease term, the tenant usually has exclusive supervision of the land. If noxious weeds are not properly controlled, the county weed supervisor, upon giving notice to the owner or operator of the land, has the authority to enter upon the land, perform any necessary treatment, and charge the landowner for weed control services.¹⁰ The cost of the treatment is not charged against the tenant. If the county weed supervisor's cost for treatment is not paid within 30 days, it becomes a lien against the land.¹¹

Permanent improvements. If the tenant erects permanent improvements on the leased property, the general rule, absent an agreement to the contrary, is that the tenant is not entitled to remove the improvements at the end of the term of the lease. Permanent improvements include permanent buildings, soil conservation terraces, and improvements to existing structures. In addition, the tenant is generally not entitled to compensation for the value of permanent improvements the tenant places on the property, or the value the tenant adds to existing structures. However, a tenant may remove items that the tenant adds to the property which are not considered to be part of the real estate, such as portable buildings and feeders.

Again, a well-drafted written lease can eliminate uncertainties over the rights to improvements placed on the leased premises.

Liability for injuries on the leased premises. An important concern of parties to lease agreements is the potential liability for injuries that occur on the leased premises. Under the general rule, the tenant is responsible for injuries that occur to others on the premises or as a result of items that the tenant controls (such as livestock that escape an enclosure and cause injury). It is the tenant's responsibility to maintain the leased premises in a reasonably safe condition. The landlord is generally not liable to either the tenant or third parties for injuries that

⁷ Simpson v. McCormach, 125 Or. App. 603, 866 P.2d 489 (1994).

⁸ 735 Ill. Comp. Stat. Ch. 5/9-217.

⁹ K.S.A. 2-1314. The list of noxious weeds is contained in K.S.A. 2-1314, and includes kudzu, field bindweed, Russian knapweed, Canada thistle, quackgrass, leafy spurge, bur ragweed, pignut, musk (noddling) thistle, Johnson grass, hoary cress and sericea lespedeza. County commissioners may, at their option, designate bull thistle and multi-flora rose as noxious weeds. Also, the Kansas Secretary of Agriculture has the authority to designate any county a sericea lespedeza disaster area after consulting with the county commissioners. If such a designation is made, conservation districts can aid in the control and eradication of sericea lespedeza.

¹⁰ K.S.A. 2-1331; 2-1332.

¹¹ K.S.A. 2-1332.

occur on the leased premises.¹² However, a landlord may be liable if injury results due to an undisclosed danger known to the landlord but not disclosed to the tenant. Also, the landlord is responsible for dangerous conditions to persons not on the leased premises, such as a low-hanging tree branch across a public road. In addition, if the landlord retains control over a part of the premises and injury results on that part, the landlord is responsible. Likewise, if the premises are leased for the public's admission, or the landlord agrees to repair a defect on the premises and either fails to do so and injury results, or the repair is made negligently resulting in injury, the landlord is liable. Another exception to the general rule of landlord non-liability for a tenant's acts is if the landlord knows that the tenant is harming the property rights of adjacent landowners (e.g., via the creation of a nuisance) and does nothing to modify the tenant's conduct or terminate the lease. In that situation, the landlord can be held liable along with the tenant.

In general, a licensee or invitee of the tenant has no greater claim against the landlord than has the tenant. Thus, a landlord's duty to not wantonly or willfully injure a trespasser is usually passed to the tenant who has control of the property. However, a landlord can be held liable where the landlord knew of defects that were likely to injure known trespassers.

A landlord is also usually not held responsible for injuries occurring on the leased premises caused by animals that belong to the tenant.¹³

Assignment of agricultural leases. A farm tenant is not permitted to transfer or assign the lease without the written permission of the landowner, unless the lease is for more than two years or the tenancy is at-will or by sufferance.¹⁴ If the tenant assigns the lease improperly, the lease is voidable and the landowner has a right to re-enter the land, take possession, and remove the person possessing the property upon giving ten days' notice.¹⁵ But if an assignment is proper, the new tenant has the same legal rights as the prior tenant.¹⁶ Similarly, the new owner has the same rights against the tenant as did the original landowner.

Sale of leased property. When leased property is sold, the new landowner normally takes the property subject to the existing lease, and must follow applicable state law concerning the tenancy relationship as well as the terms of any written lease. However, absent an agreement to the contrary, the tenant does not have to agree to become the tenant of a new landowner when the former landowner sells the property.¹⁷ Likewise, if a tenant pays rent to a landlord before receiving notice of the sale of the property, the tenant does not have to pay the new owner for the same rent period.

An additional point is that an owner, after selling the premises, may sue the tenant for any past due rent caused by the tenant's abandonment of the property *before* the sale.

¹² See, e.g., *Leopold v. Boone*, No. 06A04-0904-CV-205, 2009 Ind. App. Unpub. LEXIS 1291 (Ind. Ct. App. Sept. 4, 2009); *Wilcox v. Cappel*, 1996 WL 706782 (Neb. Ct. App. Dec. 3, 1996) (landlord not liable for injuries to tenant's cattle from ingesting nitrogen fertilizer in barn on leased premises; tenant failed to inspect premises and no implied warranty existed that premises were fit for occupancy).

¹³ See, e.g., *Bryant v. Putnam*, 908 S.W.2d 338 (Ark. 1995); *Tracey v. Solesky*, 427 Md. 627, 50 A.3d 1075 (Md. Ct. App. 2012).

¹⁴ K.S.A. 58-2511.

¹⁵ K.S.A. 58-2512.

¹⁶ K.S.A. 58-2515.

¹⁷ K.S.A. 58-2513.

Nonpayment of rent. Upon the tenant's failure to pay rent for at least three months after the rent is due, the landowner may terminate the lease after giving ten days' written notice.¹⁸ The tenant, however, may cut off the landowner's termination right by tendering the rental payment within the ten-day period.¹⁹ Unpaid rent on farmland gives the landlord a lien on the "crops" (not nursery stock or livestock) growing on or harvested from the leased premises.²⁰ The lien is superior to prior existing security interests on the crops, attaches to the landlord's share of the crop under a crop share arrangement, and gives the landlord the right of possession of the crop until the rent is paid.²¹ For cash-rent leases, the landlord must file to perfect the lien.

For livestock pasture leases, the landlord has a superior lien against the livestock for nonpayment of rent.²² To perfect the lien, the landowner must record, within 15 days after the livestock are removed from the pasture, a notice of claim against the livestock at the county Register of Deeds office in the county where the livestock are pastured. Ultimately, if the rent remains unpaid, the livestock may be sold and the proceeds used to pay the rent.

When a farm tenant fails to pay rent, but remains in possession of the leased premises, the landlord is to utilize the above-mentioned procedures. The common-law duty under Kansas law to mitigate damages only applies when the tenant has surrendered possession of the premises.²³ The landlord cannot interfere with the tenant's exclusive right of possession (implied covenant of quiet enjoyment).

Contract Law Aspects of Leases

Because a lease is also a contract, the terms of the lease are interpreted and enforced using contract law principles. For written leases, the written terms control. For oral leases, state law automatically becomes a part of the lease by implication. In either event, the parties to the lease are presumed to be aware of all applicable statutes and regulations governing their relationship. An exception may exist, however, where the parties have shown an intention contrary to the provisions in state law governing leases.

The Statute of Frauds and agricultural leases. The Statute of Frauds requires that certain contracts be in writing to be enforceable. A contract involving a conveyance of an interest in real estate is subject to the Statute of Frauds and must be in writing to be enforceable. Thus, because an agricultural lease involves the conveyance of possessory interest in real estate, it is subject to the Statute of Frauds and must be in writing to be enforceable. However, an exception exists for leases for a term not exceeding one year. Under Kansas law, oral agricultural leases run from March 1 to March 1 and are presumed to renew each year as a one-year lease on the same terms and conditions until the landlord gives notice to the tenant to terminate the lease. Thus, oral agricultural leases are enforceable as an exception to the Statute of Frauds.

Part performance by the tenant to an agricultural lease may also constitute an exception to the Statute of Frauds. For example, an oral agricultural lease might be removed from the

¹⁸ K.S.A. 58-2507.

¹⁹ Id.

²⁰ K.S.A. 58-2524.

²¹ See, e.g., Dale v. Taylor, 63 Kan. 674, 66 P.993 (1901). However, the landlord should first seek order for possession.

²² K.S.A. 58-220.

²³ Miller v. Burnett, No. 116,373, 2017 Kan. App. LEXIS 43 (Kan. Ct. App. Jun. 9, 2017).

requirements of the Statute of Frauds if payment of consideration (whether in money or in goods or services) has been made, the lessee has taken possession, or the tenant has made valuable improvements to the land. Planting a crop can be a valuable improvement for purposes of part performance. Indeed, one Kansas court has held that the planting of a wheat crop would not constitute a valuable improvement, but planting alfalfa (a perennial crop) would.²⁴ The court distinguished the two crops on the basis that one of the main reasons for planting alfalfa is to fertilize the soil.

Agricultural leases as personal services contracts. Another issue that can arise under an oral agricultural lease is what happens when either the tenant or landlord dies during the lease term. If the landlord dies, the outcome is fairly straightforward. The landlord's heirs assume the responsibilities that the decedent had before death. If the lease is to be terminated, the heirs will have to follow the appropriate statute for terminating the tenancy. If the tenant dies, however, the outcome may be different. Some courts hold that the lease is a contract for services to be performed exclusively by the tenant and no one else. Upon the tenant's death, these courts hold that the oral contract ends and no notice of termination as might be required by state statute is necessary.²⁵ The Kansas Supreme Court has not ruled clearly on this point. In a case involving the death of a tenant, the court held that the lease did not automatically terminate because the terms of the written lease at issue said it was binding on the "heirs, successors, executors and administrators of the parties."²⁶ However, while the court did rule that the tenant's heirs were entitled to recover costs that the deceased tenant actually expended before death, the tenant's heirs were not entitled to continue farming the ground until receiving statutory notice of termination. That's the same outcome that would have resulted had the court simply ruled (as the trial court did) that an agricultural lease is a personal services contract.

Termination of the tenancy. If the termination date of the tenancy is not specified in a written lease, state law controls the procedure for terminating the lease. Under Kansas law, the landlord must give the tenant written notice of termination at least 30 days before March 1 and specify that the lease terminates on March 1.²⁷ The rule applies for crop, livestock grazing, and hay ground leases. For leases involving alfalfa ground, if the tenant planted and obtained a satisfactory stand of alfalfa the preceding fall, the landlord must pay the fair and reasonable value of all services performed in obtaining the stand and all seed, fertilizer, herbicide, and pest control expenditures.²⁸ If the tenant has planted fall crops before receiving statutorily effective notice, the lease ends upon either harvest of the crop or August 1, whichever is earlier.²⁹ The same is true if the tenant has either worked the ground or prepared it in conformance with normal farming practices, but has not yet planted a fall crop before receiving notice of termination.³⁰ But if the landlord gives notice before the tenant prepares the ground for the planting of a fall crop in accordance with normal farming practices, the lease ends on March 1.³¹

The notice of termination should be served on the tenant personally. It may be best to send the notice by registered mail return receipt requested, or certified mail return receipt requested,

²⁴ Stuber v. Sowder, 168 Kan. 467, 213 P.2d 989 (1950).

²⁵ See, e.g., Ames v. Sayler, 267 Ill. App. 3d 672, 642 N.E.2d 1340 (1994).

²⁶ In re Estate of Sauder, 156 P.3d 1204 (Kan. Sup. Ct. 2007).

²⁷ K.S.A. 58-2506(a).

²⁸ K.S.A. 58-2506a(b).

²⁹ K.S.A. 58-2506(b).

³⁰ K.S.A. 58-2506(c).

³¹ See Leatherwood v. Orebaugh, 27 Kan. App. 2d 730, 8 P.3d 55 (2000).

addressed to the tenant at the tenant's usual place of business. If the tenant cannot be found, a copy of the notice may be left at the tenant's usual place of residence, or by delivering a copy to a person over age 12 who resides on the leased premises. If no such person can be found, the notice may be posted in a conspicuous place.³²

³² The procedure for service of notice is found at K.S.A. 58-2510. See also *Geren v. Geren*, 29 P.3d 448 (Kan. Ct. App. 2001)(service of termination adequate where posted on door or trailer that tenant owned located on leased land).