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Verbal Farm Leases After the Arkansas Residential Landlord-Tenant Act of 2007

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Land leasing is a vital part of Arkansas's agricultural economy, and the recent enactment of the Arkansas Residential Landlord-Tenant Act (ARLTA) stands to have a substantial impact on the state's tenant farmers and ranchers. Submitted as Act 1004 of the 86th General Assembly of the State of Arkansas, ARLTA was signed into law on April 4, 2007, and took effect July 31, 2007. This Act modifies the statutory notification and termination rights that were once afforded to those involved with leasing lands for agricultural purposes. A significant portion within Arkansas's statutes governing farmland leasing was stricken by the Act without offering clear guidance as to how verbal agricultural leases are to be terminated. As a result of the implementation of ARLTA, a new degree of uncertainty surrounds verbal farmland leases and the rights of the landlords and tenants involved.

Statutory guidance is important in the context of verbal leasing because it provides a degree of structure to the arrangement and helps provide some governance for the relationship between landlord and tenant. Generally, the terms of lease will control the notification requirements for termination, but if no such term is included in the agreement, then the statutory provision controls by default. Application of the statutory principles is likely to occur when landlords and tenants enter into oral lease agreements because they often lack definiteness in terms, specifically those relating to termination. A portion of ARLTA eliminates some of the structure and definiteness that can be applied in those situations due to its repeal of *Arkansas Code Annotated* § 18-16-105. That statutory section provided Arkansas landlords and tenants with a clearly defined date of June 30 for notification of plans to terminate the lease on land primarily used for agricultural purposes.

In light of the repeal of this section, persons involved with oral farmland leasing are faced with the additional risk of not having clear guidance concerning termination of their oral agreements. At this early stage, it is difficult to tell how the courts and those involved in land leasing will react to this change. What can be done is make an attempt to inform the public of this change, discuss its ramifications and speculate as to how courts and those involved

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with leasing agricultural land will react so that plans can be made for the upcoming years.

One of the major objectives of the ARLTA is "to simplify . . . and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants" and "to encourage landlords and tenants to maintain and improve the quality of housing." Noticeably absent from the purpose of the Act is the reform of the laws governing oral agricultural leases. The newly enacted ARLTA does not replace *Arkansas Code Annotated* § 18-16-105 section with a new date or specific guidelines for terminating oral leases, but rather specifically eliminates it from statutory scheme. Yet, ARLTA specifically excludes itself from application in the context of agricultural leases. Even the Act's own definitions of "tenant," "rental agreement" and "premises" point the application of the statute in the non-agricultural direction.

The ARLTA's removal of Arkansas's statutory provision specifically relating to agriculture's exceptionality in the context of oral leases tends to direct courts and those persons involved with these types of leases more in the direction of traditional commercial leasing requirements. Under the former statutory scheme, a special provision applied to agricultural leases that resulted in them being treated differently from both commercial and residential leases, specifically with regard to termination. Beyond the repeal of that special provision, ARLTA's perceived inapplicability with regard to agricultural leases would not afford the newly created protection applied to residential tenants. Due to the repeal of the statute that gave rise to the special termination requirements for agricultural leases and the void created by ARLTA, the courts, landlords and tenants may have to apply the traditional concepts of termination associated with commercial leasing to agricultural activities, develop a new body of law specific to oral agricultural leases or await further legislative action.

When evaluating the current status of Arkansas law concerning the termination of oral agricultural leases, it may be beneficial to take a look at what guidance is still available for these situations. Commercial leasing standards are generally less well developed than the residential standards prior to the ARLTA, probably because the parties to those leases are more likely to put their arrangement in writing. Nonetheless, when leasing agricultural ground, courts have found that tenants have an expectation to harvest the crops only after the crops have been planted. If a lease is breached by the landlord and the tenant cannot remove the crop, the tenant can recover the cash market value of the matured crop minus the expense of harvest and marketing. This measure of damages will be different than probable profits from the lease because the calculations are speculative. Too many uncertain factors, including the price of the crop, the weather, the costs of labor and the quality of the crop, can influence the potential profits before planting. Consequently, the damages for breach of an agricultural lease are limited to those that can be established after planting, when some of the uncertainty is eliminated. From the landlord's perspective, a breach of the expectancy to lease could potentially occur when a former tenant declines to continue with the lease and is not necessarily tied to the planting of a crop. The reasonableness of the expectation that the lease would continue and the timeliness of the notice would likely factor into a determination if the tenant is liable for the breach. A landlord's remedy for a breach of the same lease would be limited to the cash equivalent of the lease payments, if a replacement tenant cannot be found, or the difference in the lease payments as leased compared to the lease payments under the expected lease agreement, if a replacement leases at a lower rate.

The application of general commercial leasing concepts is not entirely new to agricultural leasing. Agricultural leases have always been subject to many of the same requirements associated with leasing that could have applied to both residential and commercial leases. A prime example of the application of these concepts was set forth in the decision of *Plafcan v. Griggs*, 291 Ark. 335, 724 S.W.2d 467. There, the Arkansas Supreme Court held that a tenant's lease was terminated after his landlord's death because the landlord only had a life estate in the property. The

underlying principle is that the landlord cannot convey or impart upon the tenant a greater interest in the land than he or she possessed. Since the landlord only possessed an interest that lasted the remainder of his or her life, the tenant's interest ceased upon the landlord's death. Thus, the concept of applying generally applicable concepts to agricultural leasing is not entirely new, whether oral or written. Other examples of commercial leasing concepts that could apply to agricultural leases include, but are not limited to, Arkansas's recreational use statute, which may serve to limit the liability of the landowner or tenant if someone is injured on the property, or eviction procedures if illegal or illicit activity is occurring on the property, such as the growth or manufacture of drugs.

Written farmland leases are preferable for several reasons, including adding a degree of certainty to the agreement often not found with oral agreements. Yet, many Arkansas farmers continue to choose to rent their land on their word and a handshake. This informal method of coming to an agreement often works fine until it comes time to end the relationship. It is not unusual for at least one party to the oral agreement to feel like he or she is getting the short end of the deal. The potential cost and uncertainty associated with filling the void created by the repeal of the statutory provision concerning termination of oral agricultural leases may be enough to motivate some landlords and tenants to formalize their agreements in writing. Until some clarification and guidance is offered by the legislature or courts concerning the termination of oral agricultural leases, those who choose to operate on a handshake and the word of another accept the added risk associated with the repeal of *Arkansas Code Annotated* § 18-16-105.

For more information, contact your local University of Arkansas Cooperative Extension Service county agent.

Source

Howard Brill, 1 Arkansas Practice Series: Law of Damages § 25:1, 5th Ed (2004).

Acts of Arkansas, Act 1004, The Arkansas Residential-Landlord Tenant Act of 2007.

The National Agricultural Law Center, University of Arkansas School of Law, http://www.nationalaglawcenter.org/

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