

Indiana Farm Land Leases—Key Considerations and Laws

By
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Introduction

It isn't an easy matter to discuss the legal aspects of farmland leases. When disputes arise, the law is one aspect, and the facts are another. Both are needed to resolve a dispute, and consideration of both should be factored into cropland lease arrangements. Solving disputes depends on the issue. One legal aspect is clear; at this point in time, make sure a notice to quit (lease termination) is in writing and properly delivered.

The Indiana Court of Appeals ruled earlier this year that a farmland termination was (is) required to be in writing. (See, *The Guardianship of Harold Gardner, Scott A. Gardner, Guardian vs. Carl Prochno*, Indiana Court of Appeals, March 13, 2012. Online at: <http://www.in.gov/judiciary/opinions/pdf/03131203nhv.pdf>).

It could be very risky to rely on an oral notice to terminate a lease. Further, if a new leasing arrangement is needed perhaps with the existing tenant and a lease agreement does not come, the tenant, without a proper notice to quit, likely has the land for the coming year at the same rent or arrangement as the current year.

Generally, the landowner must be knowledgeable about the rental value of his or her farm land to be able to strike an acceptable agreement for rent. Landlords must recognize the difference in the rental value of varying farmland parcels as to size in acres and quality of the land. While crop farming has been quite profitable in recent years, an oddly shaped 30 acres is not likely to be as great a concern to a tenant as a very fertile 300-acre parcel. In many cases the landowner or trustee for land will need professional assistance to obtain an appropriate rent agreement.

A Lease Is a Contract

Oral leases of farmland are as legal as written leases in Indiana, as an exception to what otherwise must be in writing.² That is, a lease of up to three years may be taken to an Indiana court, if necessary, to enforce the lease. Oral leases should be avoided. There are many problems with oral leases, including what is or was the actual oral agreement and what is left to the customs of the community. One custom is the current lease year end—nominally the end of February of the coming crop year. This custom is an ancient one but was ruled on favorably by an Indiana trial court recently and mentioned as the rule by the Court of Appeals in the past. Farming practices for Midwest crops is such that perhaps the end of December or even the end of October of a current crop year might be a better choice for ending a cropland lease. Tenants do fall work as soon as crops are harvested and make other important management decisions long before the planting time for a coming year.

Farming is a continuous process. If there is to be a new tenant, the current tenant needs to plan for the transition, and the new tenant would likely want to start preparations for the coming crop year during the late summer or the fall of a current crop year.

When should the notice to quit be delivered to be timely? **Indiana law says a lease for at least a year requires the notice be delivered three months before the lease year end.**³ The confusion or a dispute may arise over what is the lease year end in a particular situation. Short of a written agreement to the contrary or perhaps a pattern of practice, the lease year end is the end of February of the coming crop year as stated above.

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² *IC 32-21-1-1. Statute of Frauds –Writing Requirements--Paraphrasing, this statute provides that several categories of activities such as those dealing with marriage, debts, sale of lands, agreements that cannot be performed in a year ... shall be in writing, excepting, leases not exceeding the term of three (3) years.*

³ **32-31-1-3 Determination of year to year tenancy--**A tenancy from year to year may be determined by a notice given to the tenant not less than three (3) months before the expiration of the year.

Get the lease in writing, with all the appropriate details, including that the contract is a lease and not a partnership with the tenant. A major option in drafting a lease is to make it clear that it is a **term lease and that no notice is required to terminate the lease**. Clearly the law supports such a lease, and this type of lease removes the need for a timely notice to quit.⁴ Many of the disputes in ending a lease arrangement are over the need for a notice to quit, that such a notice must be in writing, and the timeliness of delivery of the notice.

Payment of Rent

It may be that one of the reasons for delaying a discussion about a different rental arrangement or the delay in delivery of a notice to quit is the landlords' concern for getting the proper payment of rent. Landlords may wait until the "11th hour" to give notice and may end up in a dispute over whether the notice was timely. An 11th-hour notice is not in the best interest of the tenant. While landlords want to avoid legal disputes, they are protected by the law in the collection of rent, in more than one way.⁵

Perhaps as important as any of the comments above is the Indiana format for a "notice to quit".⁶ **It is advised that a lawyer assist in the drafting and delivery of a lease termination notice as well as the drafting or review of a written farmland lease.**

More information may be found online in Gerry's publication at:

<http://www.extension.purdue.edu/extmedia/EC/EC-713.pdf>

For a paper copy of EC-713, *Legal Aspects of Indiana Farmland Leases and Federal Tax Considerations*, send a U.S. Mailing address to Gerald Harrison, Purdue University, Dept. of Ag Econ, 403 West State St., West Lafayette, IN, 47907.

Disclaimer: This paper is intended as a source of information for landlords and tenants that is believed to be accurate. Individuals and businesses with problems and questions should seek the services of legal counsel and other experts and references as the situation merits.

⁴ **IC 32-31-1-8 Notice to quit; when not necessary--** Notice is not required to terminate a lease in the following situations:

- (1) The landlord agrees to rent the premises to the tenant for a specified period of time.
- (2) The time for the determination of the tenancy is specified in the contract.
- (3) A tenant at will commits waste.
- (4) The tenant is a tenant at sufferance.
- (5) The express terms of the contract require the tenant to pay the rent in advance, and the tenant refuses or neglects to pay the rent in advance.
- (6) The landlord-tenant relationship does not exist.

⁵ **32-31-1-6. Rent; refusal or neglect to pay--**If a tenant refuses or neglects to pay rent when due, a landlord may terminate the lease with not less than ten (10) days' notice to the tenant unless:(1) the parties otherwise agreed; or (2) the tenant pays the rent in full before the notice period expires.

32-31-1-7 Forms; notice to quit; failure or refusal to pay rent--Sec. 7. The following form of notice may be used when a tenant fails or refuses to pay rent:(insert date here) To (insert name of tenant here): You are notified to vacate the following property not more than ten (10) days after you receive this notice unless you pay the rent due on the property within ten (10) days: (insert description of property here). (insert name of landlord here)

⁶ **32-31-1-5. Form; notice determining tenancy from year to year--** The following form of notice may be used to terminate a tenancy from year to year: (insert date here) To (insert name of tenant here): You are notified to vacate at the expiration of the current year of tenancy the following property: (insert description of property here). (insert name of landlord here).