



Farm Leases

ACTION	NA	DATE DUE	DATE DONE	Notes
1. Initial Contact <ul style="list-style-type: none"> Arrange initial interview <ul style="list-style-type: none"> Verify the potential client's identity in accordance with the Law Society of Saskatchewan's Client Identification and Verification Rules Determine and assess actual and potential conflicts of interest. Determine who you will be acting for – landlord, tenant or both; ensure there is no existing or potential conflict of interest, and where applicable, consider disclosure of representation letter. Ask clients to bring any relevant documents. 				
2. Initial Interview <ul style="list-style-type: none"> Obtain full names of landlord and tenant and their addresses. Confirm who you will be acting for – landlord, tenant or both; confirm there is no existing or potential conflict of interest, and where applicable consider disclosure of representation letter. Advise clients regarding your account and determine responsibility for payment if acting for lessor and lessee. 				

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<ul style="list-style-type: none"> Determine what your client wishes to accomplish and whether in fact a lease is what is desired; consider matters such as: <ul style="list-style-type: none"> Has landlord considered tax advantages and disadvantages of leasing land as opposed to entering into Custom Farming or Joint Venture Agreement? A lease may cause landlord to lose his or her status as farmer for purposes of rollovers, capital gains exemptions and other related tax issues. Refer landlord for tax advice as necessary. 				
<ul style="list-style-type: none"> Who is making the farming decisions, the landlord or tenant? Is tenant prepared to act as custom operator or joint venturer where landlord makes decisions, as opposed to being tenant making all agronomic decisions within confines of lease? 				
<ul style="list-style-type: none"> Determine whether rental will be in form of cash rent, considering the following: <ul style="list-style-type: none"> Amount of annual cash rent; it is not the solicitor's role to advise as to proper rental rates; Saskatchewan Ministry of Agriculture offers a resource in the form of a publication as to cash rentals and how to determine an appropriate rental rate (Land Rental Arrangements). 				
<ul style="list-style-type: none"> Is rent payable in installments (for example, may provide for 50% prior to seeding and remainder after harvest)? 				
<ul style="list-style-type: none"> What is due date of each installment? 				
<ul style="list-style-type: none"> Does landlord wish to take any security for payment of rent, such as security interest in crop or other personal property of tenant? 				
<ul style="list-style-type: none"> Are you to prepare Security Agreement? Are you to register same under <i>The Personal Property Security Act, 1993</i>, SS 1993, c P-6.2, at the Personal Property Registry? 				
<ul style="list-style-type: none"> Is there an interest penalty for late payment of installments, and if so, at what rate? 				

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<ul style="list-style-type: none"> ○ A landlord must consider whether or not they are required to be a registrant for the purpose of collecting and remitting Goods and Services Tax. The lease of farmland on a cash rent basis is the provision of a taxable supply within the meaning of the <i>Excise Tax Act</i>, RSC 1985, c E-15. A crop share lease is not considered as a taxable supply. If there are any questions in relation to remittance of GST, the parties should consult CRA. 				
<ul style="list-style-type: none"> • If rental is to be in form of crop share (Crop Share Lease Agreement), consider the following: <ul style="list-style-type: none"> ○ Percentage of crop to be treated as rent. 				
<ul style="list-style-type: none"> ○ Where will landlord's share of crop be delivered? 				
<ul style="list-style-type: none"> ○ Is tenant entitled to remove straw from field, and if so, how does he or she compensate landlord? 				
<ul style="list-style-type: none"> ○ Is share of crop the same with regard to all acreage (e.g., irrigated portions sometimes carry different rental provision from dry land)? 				
<ul style="list-style-type: none"> ○ Does landlord wish to take any security for payment of rent, such as security interest in crop or other personal property of lessee? 				
<ul style="list-style-type: none"> ○ Are you to prepare Security Agreement? Are you to register same under <i>The Personal Property Security Act</i>, 1993, SS 1993, c P-6.2, at the Personal Property Registry? 				
<ul style="list-style-type: none"> ○ Does landlord share in any cost of inputs, such as seed, fertilizers, herbicides, or pesticides? 				
<ul style="list-style-type: none"> • Determine whether any or all of land involves pasture land. If pasture, how will rental be determined? Consider the following alternatives: <ul style="list-style-type: none"> ○ Will rental be in form of share of calves? 				
<ul style="list-style-type: none"> ○ Will rental be in form of cash? Cash rent can be determined by the following method: <ul style="list-style-type: none"> ➤ Cash rent per acre of pasture 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
➤ Cash rent per head of livestock or animal unit				
➤ If clients are uncertain as to method of compensation, they can again be referred to a publication from Saskatchewan Ministry of Agriculture on Pasture Lease Agreement .				
○ Will there be restriction on number of livestock or animal units that will be allowed to be pastured? (Many landlords want to protect their pasture land from being overgrazed and wish to restrict number of head on leased property.) Is there to be a penalty for breach of the restriction?				
○ Who has responsibility for maintaining fences on pasture land?				
• Determine term of lease, including date of commencement and termination.				
• Does either party have the right to terminate (other than for breach) prior to expiration of term? If so, bear in mind the following:				
○ Notice should be required to be served within reasonable time prior to commencement of spring seeding.				
○ Termination should be for anniversary date of commencement of lease or after harvest, and not during growing season.				
○ What are mechanics of notice (e.g., registered letter, personal service, etc.)?				
○ What compensation, if any, is payable to lessee if lease is determined prematurely and lessee has loss such as herbicide, fertilizer or other crop inputs applied in fall? Is there compensation to lessee for fall seeded crop, and if so on what basis?				
○ If right to terminate accrues to landlord because of wish to sell, does tenant have right of first refusal?				

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<ul style="list-style-type: none"> ○ What is effect of death of the landlord or tenant on ability to terminate? 				
<ul style="list-style-type: none"> ○ Consider and advise on implications to the estate if lease remains binding after death of either party. 				
<ul style="list-style-type: none"> • Where land is being leased, bear in mind the following: <ul style="list-style-type: none"> ○ Is any portion of land reserved to lessor, such as yard site? 				
<ul style="list-style-type: none"> ○ Does any right accrue with regard to any part of land to landlord or previous tenant, such as grain stored on premises, or right to crop seeded the year prior to commencement of new lease? 				
<ul style="list-style-type: none"> ○ Is any of land a homestead, or has it ever been a homestead under <i>The Homesteads Act, 1989</i>, SS 1989-90, c H-5.1? Ensure compliance with this legislation, if applicable. 				
<ul style="list-style-type: none"> ○ Is land subject to any encumbrance, judgment, matrimonial property order, or similar charge that can affect landlord's and tenant's rights? (This must be determined from title search described below, but landlord's input into this issue should be discussed at initial meeting.) If land is mortgaged, note section 139 of <i>The Land Titles Act, 2000</i>, SS 2000, c L-5.1, which provides that a lease for a term in excess of three years is not valid as against a mortgagee unless the latter consents to or adopts the lease. 				
<ul style="list-style-type: none"> • What restrictions are placed on tenant with regard to acres to be summer fallowed, crops to be grown, chemicals to be applied and what is penalty for breach of these provisions? Does landlord require completion of fall tillage operation? Is there to be a penalty for breach of the restriction? 				
<ul style="list-style-type: none"> • Is tenant prohibited from removing gravel, sand, clay, trees or diverting water? 				

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<ul style="list-style-type: none"> What is obligation of each party for provision of grain storage? If grain storage is on lands other than leased lands, what provision is there for access? 				
<ul style="list-style-type: none"> What are parties' wishes with regard to sharing of costs of and benefits from various governmental programs, such as crop insurance, subsidies, etc.? Provide for each parties' contribution to premiums, if any, bearing in mind that most government programs are payable to lessees. <ul style="list-style-type: none"> Normally, if benefit is to accrue to landlord for insurance program, he or she would pay a portion of premium. How will premium payment be handled? 				
<ul style="list-style-type: none"> What provision do parties wish for maintenance, upkeep and repair of buildings? <ul style="list-style-type: none"> If lease includes irrigation, what is obligation of each party with regard to repair and upkeep of irrigation equipment? 				
<ul style="list-style-type: none"> Is tenant responsible for major repairs? 				
<ul style="list-style-type: none"> Who is responsible for energy charges for irrigation? 				
<ul style="list-style-type: none"> Consider property and liability insurance and responsibility for payment of premiums in relation to same. 				
<ul style="list-style-type: none"> Determine whether the parties are contemplating any improvements to be made to the land or buildings. <ul style="list-style-type: none"> If so, outline what improvements will be made and who is responsible to pay the costs of labour and materials. 				
<ul style="list-style-type: none"> Will there be any additional compensation to the tenant for other costs or losses he or she may incur as a result of the improvements? 				
<ul style="list-style-type: none"> Clarify whether the improvement will remain with the land following expiration of the lease. 				

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<ul style="list-style-type: none"> Consider a provision addressing compensation between landlord and tenant for future rights of way, utilities, roads and oil and gas exploration. 				
<ul style="list-style-type: none"> Is tenant liable for any portion of taxes? 				
<ul style="list-style-type: none"> If land is irrigated, is tenant liable for all or any part of water tax? 				
<ul style="list-style-type: none"> What are tenant's obligations with regard to environmental laws? Are there any restrictions on use and disposal of hazardous substances? 				
<ul style="list-style-type: none"> Does the tenant want to file an interest with the Saskatchewan Land Registry? <ul style="list-style-type: none"> If the lease is for less than three years and the tenant is in actual occupation, the tenant has an implied interest under clause 18(1)(d) of <i>The Land Titles Act, 2000</i>, SS 2000, c L-5.1. 				
<ul style="list-style-type: none"> However, the tenant can register an interest for less than three years by selecting the appropriate "Interest Type" on the Application for Interest Registration. 				
<ul style="list-style-type: none"> A tenant can also register an interest for a lease of more than three years. In this latter case, an expiry date may be chosen. 				
<ul style="list-style-type: none"> Explain the cost of interest registration and advise landlord that he or she will be receiving notice from ISC of the registration of the interest. 				
<ul style="list-style-type: none"> Explain the necessity for discharge of the interest upon expiration of lease. 				
<ul style="list-style-type: none"> Is lease subject to right of renewal? <ul style="list-style-type: none"> If there is renewal, is it automatic, subject to either party serving notice of refusal? 				
<ul style="list-style-type: none"> What are mechanics of serving notice? 				
<ul style="list-style-type: none"> Consider a provision for overholding tenants. 				
<ul style="list-style-type: none"> Does tenant have right of first refusal if land is sold? 				

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<ul style="list-style-type: none"> ○ Explain difference between rights of first refusal and option to purchase and ability or inability to register an interest. 				
<ul style="list-style-type: none"> ○ The mechanics of giving notice and exercising right of first refusal should be carefully spelled out to avoid confusion and litigation. Consider the methodology used in section 27 of <i>The Saskatchewan Farm Security Act</i>, SS 1988-89, c S-17.1, as it has worked relatively well in the past. 				
<ul style="list-style-type: none"> • Does tenant have ability to sublet, and if so, on what terms? 				
<ul style="list-style-type: none"> • Regarding indemnity provisions, it may be appropriate to consider having tenant indemnify landlord for personal injury and property damage during term of the lease. Consider scope of indemnity in conjunction with insurance requirements. 				
<ul style="list-style-type: none"> • In the event of a livestock lease, consider the following: <ul style="list-style-type: none"> ○ Description and location of the herd including any branding requirements. 				
<ul style="list-style-type: none"> ○ Particulars relating to offspring, including ownership and branding. 				
<ul style="list-style-type: none"> ○ Particulars with respect to breeding, including whether landlord or tenant is providing the breeding bulls. 				
<ul style="list-style-type: none"> ○ Care particulars and provision of veterinary services. 				
<ul style="list-style-type: none"> ○ Death, loss, and forced sale rates and any requirements for insurance. 				
<ul style="list-style-type: none"> ○ Cull requirements. 				
<ul style="list-style-type: none"> ○ Rental rate or formula for calculating rent. 				
3. After Initial Interview				
<ul style="list-style-type: none"> • Collect any information clients were not able to provide. 				
<ul style="list-style-type: none"> • Conduct search of title; review searches to determine whether there is any possible problem with section 139 of <i>The Land Titles Act, 2000</i>, SS 2000, c L-5.1, with regard to mortgagees. 				

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4. Prepare Lease				
<ul style="list-style-type: none"> Ensure lease complies with instructions received. 				
<ul style="list-style-type: none"> Consider general and interpretation provisions (see Commercial Leases Drafting Checklist, “Interpretation and General Provisions”). 				
<ul style="list-style-type: none"> Consider appropriate default provisions (see Commercial Leases Drafting Checklist, “Default”; also consider any application of <i>The Agricultural Leaseholds Act</i>, RSS 1978, c A-12). 				
<ul style="list-style-type: none"> Ensure proper homestead compliance is included (see <i>The Homesteads Act</i>, 1989, SS 1989-90, c H-5.1). 				
<ul style="list-style-type: none"> Prepare Application for Interest Registration, if required. 				
<ul style="list-style-type: none"> Obtain written consent of mortgagee to lease if required. 				
5. Conclude Lease				
<ul style="list-style-type: none"> Arrange interview with clients. 				
<ul style="list-style-type: none"> Review and execute lease with clients, pointing out various provisions as per their instructions. 				
<ul style="list-style-type: none"> Ensure homestead compliance by spouse (see <i>The Homesteads Act</i>, 1989, SS 1989-90, c H-5.1). 				
6. Follow-up After Execution of Lease				
<ul style="list-style-type: none"> Provide each client with copy of lease. 				
<ul style="list-style-type: none"> Register interest, if required. 				
<ul style="list-style-type: none"> After registration of the interest, submit bills with report to client with regard to interest registration. 				

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