

# Wheat Pasture Lease Agreements



Oklahoma Cooperative Extension Service • Division of Agricultural Sciences and Natural Resources

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This Fact Sheet is designed to assist wheat pasture owners and cattle owners who are contemplating entering a wheat pasture lease arrangement. A sample lease form is provided to illustrate the types of issues which should be discussed. Additional considerations are included in the discussion. Actual lease provisions may vary considerably, depending upon the circumstances and desires of the parties. Some landlords will be willing to provide many services while others will provide no services. Compensation should be determined by the services provided and the risks which each party is willing to bear. It is strongly recommended that an attorney be consulted to draft the actual lease agreement. The attorney can tailor the agreement to individual circumstances and can ensure that the lease accurately reflects the intentions of the Lessor and Lessee.

## Types of Grazing Arrangements

### Rate of Gain Lease

The attached sample lease is a rate of gain lease. The pasture owner's compensation depends upon the weight gain of the animals. This type of lease may be preferable for the cattle owner (lessee) since it provides incentives to the pasture owner to achieve good gain results. It also transfers some of the risk of poor gains to the lessor (wheat pasture owner).

This type of lease may also be desirable from the lessor's perspective, if he is adequately compensated for the increased risk. Lessors who generally have good pasture stands, who are dealing with a reliable source of generally healthy cattle and who have good cattle management skills are in the best position to benefit from this type of lease.

### Fixed Rate Lease

An alternative lease form is a fixed rate lease. Frequently lessor compensation is valued at a certain price per head per month. Another form of fixed rate lease

involves a fixed price per acre. If a fixed per-acre price is used, the stocking rate should be clearly specified in the lease to avoid over-stocking. Although a fixed rate lease minimizes some of the lessor's risk, some risk may still result from death loss liability. This type of lease is generally less complicated than other arrangements because the compensation scheme is straightforward.

### Profit Sharing Arrangement

A third type of grazing arrangement uses compensation based on a percentage of profits. This type of arrangement creates the greatest risk for the lessor because there is livestock price risk as well as risk of inadequate weight gain. Since profit may not be determined until some time after the cattle leave the pasture, some factors that determine profitability may be beyond the lessor's control. Detailed records will need to be maintained and exchanged between the parties.

This type of agreement will probably be the most complex and will need to be drafted carefully to insure adequate protection for both parties. In many cases such an arrangement would be deemed a partnership. Consequently, the rights and obligations of each partner and the nature and the extent of the partnership need to be specifically identified.

Individuals considering such an arrangement should be aware that a partner may be held liable for the actions of his partner in the course of partnership business. If one partner buys cattle or feed and fails to pay for them, the other partner may be held responsible for paying the bill. Similarly, if one partner sells the cattle and does not divide the proceeds, the other partner may have no recourse against the cattle buyer. While the innocent partner may have a claim against the other partner, it may not always be easy to collect any reimbursement.

### Combination Arrangements

Some lease arrangements combine characteristics of more than one of the above types of lease. For example, a lease might be based on a fixed price per hundredweight per month. If the weight is recalculated during the lease or if an average weight is used based on beginning and ending weight, the amount of payment will be affected by the amount of weight the animals gain.

## Lease Provisions

A sample lease is shown on pages 4 and 5. It is designed to illustrate some of the issues which both parties may wish to consider. It is not necessarily a recommended lease form, since the parties in each leasing situation have different circumstances and priorities.

Typically, the introductory paragraph of any lease identifies the parties. It is a good idea to list addresses, as well as names of the parties. The specific terms of the lease agreement follow in the numbered paragraphs.

**Paragraph 1** identifies the lease period. While some flexibility may be necessary to allow for varying weather and growth conditions, this should be as specific as possible. If specific starting and ending dates are not set when the lease is signed, the parties should explain how the specific dates will be determined. It may be desirable to require a minimum number of days advance notice before cattle are delivered, since both parties will probably need to make advance preparations. The amount of notice required may be varied to fit the individual situation. Each party will need to consider what types of preparations will be needed and how much time will be required. Will additional laborers need to be available to help load or unload the animals? Will the individuals want to be present when the cattle are weighed? If so, do they have to travel a long distance? Typically one to five days notice may be required.

Paragraph 1 also includes some special protections for each of the parties. The Lessor is protected by a provision which allows him to remove the cattle and sell them if the Lessee fails to pick them up by a specified date. An alternative might allow the Lessor to transport the animals to the Lessee's location at the Lessee's expense. However, such a provision does not insure that the Lessor will be able to collect the trucking expense or the balance owed him if the Lessee is unable or refuses to pay.

Another provision in paragraph 1 allows the Lessee the option to terminate the lease early in case of extreme death loss or inadequate gains. This may be particularly important in situations where the Lessee has not had previous experience with a particular lessor, since growing conditions are largely controlled by the Lessor. It sets some upper limit on the losses the Lessee may be forced to bear. The fact that the problems must be certified by two veterinarians helps prevent abuse by the Lessee and termination for invalid reasons.

In some cases, the Lessee might want to be able to terminate the lease early due to market conditions, poor weather or other factors. If termination for such reasons is allowed without mutual agreement, it may greatly inconvenience the Lessor, since he probably won't be able to lease the pasture to anyone else at that late date. If such a provision is important to the Lessee, the lease should identify the conditions under which early termination is allowed and the compensation which will be given to the Lessor for his inconvenience.

**Paragraph 2** simply identifies the number and weight range of the animals, the location of the pasture, and the beginning lease date. The beginning date may be a specific date, if known, a range of dates, as in the sample lease, or a certain month.

**Paragraph 3** designates how the beginning and ending weights will be computed. This is important in rate of gain leases, since compensation is based on the weight gain. Such a provision may not be necessary in other types of leases, unless gain is important for some other reason. Typically a pencil shrink of 1 to 3 percent is deducted from the preshipment weights. Some leases also require that the cattle be held off feed and water for 12 hours before being weighed.

**Paragraph 4** allocates shipping risks and discusses condition of the animals. Generally, the Lessee bears the risk of loss during shipment to and from the pasture. The Lessee promises that cattle are healthy and free from disease and the Lessor reserves the right to refuse cattle that are not healthy. Expectations concerning vaccinations and treatment of animals prior to delivery should be discussed and included so that there is no confusion later. The appropriate types of required vaccinations will depend upon state health regulations, age and type of cattle, whether cattle are being shipped across state lines, and preferences of the parties.

**Paragraph 5** The Lessor is required to furnish proof of death for any animals that die. Such proof might include remains, brand, rendering receipt or other proof. Recognizing that it may not always be possible to obtain proof of death, some means of compensation must be established for missing animals. The sample lease provides that compensation will be at a specified weight per pound, based on the incoming weight. The rate used might be the market price at the time the lease began. For example, if the animals averaged 450 pounds when placed on pasture and if the rate designated was 70 cents per pound, compensation for each missing animal would be \$315. It may be desirable, in addition, to set some type of limit, beyond which, compensation would be based on value of the animals at the end of the lease minus the pasturage charge. Such a limitation would remove the possible temptation for the Lessor to sell animals if prices have increased substantially during the lease period or if a substantial profit margin exists.

If a clause such as paragraph 5 is used, it will be very important for the Lessor to be able to account for dead animals. In many cases, paragraph 6 makes the Lessee responsible for losses from deceased animals while paragraph 5 makes the pasture owner responsible for missing animals.

**Paragraph 6** The sample lease makes the Lessee responsible for all death loss during the first 30 days of the lease. This protects the Lessor in case the animals are suffering from some undetectable illness when they are delivered. However, the Lessee may find such a provision to be undesirable since the Lessor has control over the

well-being of the animals during that period. The parties may wish to modify this provision. One possible alternative might limit the Lessee's responsibility to cases where the animals die from illnesses which were probably contracted prior to delivery. A veterinarian's certification might be used to establish this. If such a variation is used, it may be desirable to place the burden on the Lessor to obtain the veterinarian's certification in order to escape liability.

If animals die from pre-existing illnesses, another issue arises concerning who should pay for required veterinary and other medical expenses. Allocation of medical expenses in general is handled in paragraphs 8 and 9. If this is a matter of concern, the parties may wish to include a special provision for handling pre-existing illnesses. However, the increased complexity created by including such a provision may outweigh the benefits of the provision.

Paragraph 7 describes how compensation will be computed. In the sample lease, compensation is based on rate of gain. In rate of gain leases, the clause describing how gain will be calculated should be drafted very carefully. In particular, consideration should be given as to how death losses will affect compensation. In this example, Gain = [Shrunk weight out - (Ave. Shrunk weight in \* No. of animals out)]. Lessee does not pay any rent for deceased or missing animals.

Paragraph 8 outlines what the Lessor will provide and paragraph 9 explains what the Lessee will provide. Items may be added or deleted to fit the needs of the parties. Items which might be included are care, labor, supplemental feed, hay, silage, water, salt, minerals, insecticides, medical treatment of illness or injuries,

vaccinations, worming, branding or ear tagging, and payment of personal property taxes, transportation expenses, inspection and health certificate costs.

In particular, the last sentence of paragraph 8 may need to be stricken or modified to fit the situation. If supplemental feed, hay or silage is provided, the circumstances in which they will be provided should be specified. Will they be provided routinely on a self-fed basis, or in specified quantities, or only if pasture is inadequate? In some leases, the Lessor provides the services and the Lessee provides the feed or medicines, but it is probably simpler to have either the Lessee or Lessor provide everything and adjust the rate of compensation accordingly.

Paragraph 10 explains the dates upon which deposits and final payments will be due. It also provides for a refund of excess deposits. Paragraph 11 grants the Lessor a lien on the cattle to secure payment of the lease amount. If no prior superior liens exist, the first sentence of paragraph 11 should be deleted. Paragraph 12 states that if either party breaches the agreement, the other party may collect reimbursement for attorney fees and costs required to enforce the agreement. Rights under the agreement may not be transferred without consent of both Lessor and Lessee.

Table 1 (below) suggests some possible substitute paragraphs that might be used if compensation is based on a fixed price per hundredweight per month rather than on a rate of gain basis. The weight used is based on the average weight of the animals during the lease period. As alternatives, some leases simply use incoming weights or provide for reweighing the animals halfway through the lease period.

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**Table 1. Substitute Paragraphs for Lease Based on Fixed Price per Hundredweight per Month**

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paragraph 7 Lessee agrees to pay Lessor at the rate of \$ \_\_\_\_\_ per hundredweight for each month the animals are on pasture. The weight used to compute compensation will be computed as follows:

$$\text{Total incoming weight (cwt.)} + \left[ \frac{\text{Total outgoing weight (cwt.)} - \text{Total incoming weight (cwt.)}}{2} \right]$$

paragraph 8 Lessor will provide \_\_\_\_\_ acres of wheat pasture. Lessor will furnish at his expense, \_\_\_\_\_ needed in the care of cattle while they are in his possession. Lessor agrees to care for the cattle in a reasonable and prudent manner, and at conclusion of the lease period, to load cattle on lessee's trucks. Supplemental feed hay, silage and other supplements will not be provided by Lessor except as noted above.

paragraph 10 Lessee will pay a deposit of \$ \_\_\_\_\_ per head upon signing of contract. An additional deposit of \$ \_\_\_\_\_ per head will be due upon arrival of cattle at Lessor's ranch. These deposits will be applied toward the \$ \_\_\_\_\_ per hundred weight per month charge. Any additional balance will be due immediately upon completion of weighing the cattle at the end of the lease period. If deposits paid exceed total amount owed, Lessor will refund any excess deposit at the end of the lease period.

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**WHEAT PASTURE LEASE**  
(Rate of Gain)

This agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by and between \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as Lessor, and \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as Lessee.

Parties hereto agree:

1. This lease of wheat pasture will run from approximately \_\_\_\_\_, 19\_\_\_\_ to approximately \_\_\_\_\_, 19\_\_\_\_, depending upon weather conditions. Lessee agrees to pick up cattle between \_\_\_\_\_, 19\_\_\_\_ and \_\_\_\_\_, 19\_\_\_\_. If Lessee refuses to pick up these animals by \_\_\_\_\_, 19\_\_\_\_, Lessor has the right to send the cattle to a public auction, deduct the balance owed under this contract, plus trucking cost plus \$5.00 per head commission from the proceeds, and remit the balance of the proceeds to Lessee. Should pasture conditions deteriorate, the lease may be terminated by mutual agreement at an earlier date. Parties agree that removal date will be selected at least \_\_\_ days in advance and notice will be given to all parties so that arrangements may be made for removal. If the Lessor fails to exercise due diligence in caring for the health of cattle, resulting in a death loss in excess of \_\_\_% or if the Lessor fails to provide adequate pasture to support normal gains for the season, the Lessee may elect to terminate the lease early, without agreement of Lessor, by giving \_\_\_ days notice, provided the inadequate health and/or gains are certified by two veterinarians in the area. Lessee will pay the cost of obtaining the certification by the veterinarians. Lessee may not remove cattle early solely because of cattle price deterioration.

2. Lessee will deliver \_\_\_\_\_ head of cattle, weighing \_\_\_\_\_ to \_\_\_\_\_ pounds, to \_\_\_\_\_ location between \_\_\_\_\_ and \_\_\_\_\_, 19\_\_\_\_.

3. Cattle will be weighed at \_\_\_\_\_ before being shipped. A \_\_\_ percent pencil shrink will be subtracted from actual weight in order to compute shrunk weight. Lessor will be notified of shipping date at least \_\_\_ days in advance in order that Lessor or his representative may be present at the weighing and so that Lessor may be prepared to receive the cattle. At the end of the lease period, cattle will be weighed at \_\_\_\_\_ and a \_\_\_ percent pencil shrink will be subtracted from the final actual weight.

4. Lessee will bear all risk of loss or damage during shipment and delivery to and from the pasture. Lessee agrees that all cattle will be healthy and free from contagious disease on delivery. All cattle will be wormed and vaccinated with \_\_\_\_\_ prior to delivery to pasture. In case of seriously ill, crippled or otherwise unmarketable cattle, the Lessor will have the right to refuse such cattle at the time of unloading and such cattle may be returned to Lessee at no expense to Lessor.

5. Lessor will furnish proof of death for those animals that die during the lease period. Any shortage of animals for which proof of death cannot be furnished will be paid for by Lessor at \_\_\_\_\_ cents per pound times the average shrunk weight of incoming cattle. Lessor shall report any excessive death losses promptly before disposal of carcasses.

6. Lessee will be responsible for all death loss during first 30 days after cattle are delivered. During the remainder of the lease period, Lessee will be responsible for death losses up to \_\_\_\_\_ % of the original number of animals. Lessor will absorb all death loss in excess of this amount. Lessor's share of death loss will be compensated at \_\_\_\_\_ cents per pound times the average shrunk weight of incoming cattle. Lessor agrees to do his best to minimize death losses.

7. Lessee agrees to pay the Lessor on a gain basis at \_\_\_\_\_ cents per pound of gain. Gain will be measured as follows:

Gain = [Outgoing shrunk weight - (Average incoming shrunk weight \* Number of animals out)]

8. Lessor will provide \_\_\_\_\_ acres of wheat pasture. Lessor will furnish, at his expense, \_\_\_\_\_ needed in the care of cattle while they are in his possession. Lessor agrees to care for the cattle in a reasonable and prudent manner, and at conclusion of lease period, to load cattle on lessee's trucks. Supplemental feed, hay and silage will only be provided if Lessor determines that pasture alone is not providing adequate nutrition for the animals.

9. Lessee will pay all trucking expense to and from the ranch, all personal property taxes levied upon the cattle, if any, brand inspection fees, and health paper costs. Lessee agrees that all cattle delivered will be branded prior to delivery to pasture as follows:

10. Lessee will pay a deposit of \$ \_\_\_\_\_ per head upon signing of contract. An additional deposit of \$ \_\_\_\_\_ per head will be due upon arrival of cattle at the Lessor's ranch. These deposits will be applied toward the \_\_\_\_\_ cents per pound of gain charge. Any additional balance will be due immediately upon completion of weighing the cattle at the end of the lease period. If deposits paid exceed gain charges, Lessor will refund any excess deposit at the end of the lease period.

11. Lessor acknowledges that \_\_\_\_\_ has a superior mortgage and/or lien on the cattle except for any pasturage lien due Lessor on cattle. It is agreed that Lessor shall have, in addition to any statutory liens, a specific lien against the cattle pastured until all consideration under this contract has been fully paid.

12. Should there be any default or breach of this agreement by either party, the defaulting party shall be liable for attorney's fees and costs of the non-defaulting party occasioned by the default.

13. This agreement shall be binding upon the parties, their representatives and successors, and shall not be subject to assignment or transfer by either party without the written consent of the other party.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

\_\_\_\_\_  
(Lessor)

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

\_\_\_\_\_  
(Lessee)

## The Oklahoma Cooperative Extension Service

### *Bringing the University to You!*

The Cooperative Extension Service is the largest, most successful informal educational organization in the world. It is a nationwide system funded and guided by a partnership of federal, state and local governments that delivers information to help people help themselves through the land-grant university system.

Extension carries out programs in the broad categories of agriculture, natural resources and environment; home economics; 4-H and other youth; and community resource development. Extension staff members live and work among the people they serve to help stimulate and educate Americans to plan ahead and cope with their problems.

Some characteristics of the Cooperative Extension system are:

- The federal, state and local governments cooperatively share in its financial support and program direction.
- It is administered by the land-grant university as designated by the state legislature through an Extension director.
- Extension programs are nonpolitical, objective and based on factual information.
- It provides practical, problem-oriented education for people of all ages. It is designated to take the knowledge of the university to those persons who do not or cannot participate in the formal classroom instruction of the university.
- It utilizes research from university, government and other sources to help people make their own decisions.
- More than a million volunteers help multiply the impact of the Extension professional staff.
- It dispenses no funds to the public.
- It is not a regulatory agency, but it does inform people of regulations and of their options in meeting them.
- Local programs are developed and carried out in full recognition of national problems and goals.
- The Extension staff educates people through personal contacts, meetings, demonstrations and the mass media.
- Extension has the built-in flexibility to adjust its programs and subject matter to meet new needs. Activities shift from year to year as citizen groups and Extension workers close to the problems advise changes.