

**Terminating Wisconsin Agricultural Leases**  
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**Introduction**

Terminating agricultural leases can lead to legal disputes due to the long-term nature of the leases and the complex statutes that govern them. To illustrate the issue, assume that Bob and Jan are neighbors in a rural agricultural community and good friends. Over a cup of coffee, Jan told Bob that she was interested in expanding her crop production and would like to farm Bob's land. Because they are good friends, Bob agrees to let Jan farm on his land and they both agree on reasonable rental terms. At this point, Bob and Jan have made an oral agreement. Now suppose the arrangement continues for five years and that Bob now wants Jan off of his land, but Jan claims that they have an enforceable oral contract. Can Bob legally remove Jan from his land? Agricultural lease law can be confusing. The purpose of this bulletin is to help navigate through these complex legal issues. More specifically, this bulletin provides information on agricultural leases and the process for terminating agricultural leases under Wisconsin law.

**Definition of a lease**

1. Under Wisconsin Statute § 704.01 (1), a "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be determined by reference to some event such as completion of a building.

**Creating a Lease**

Under Wisconsin Statute § 704.03 (1), an enforceable lease must meet the standard requirements of a contractual agreement in Wisconsin Statute § 706.02. The agreement must have a definite commencement and expiration date; the rental rate; and an unambiguous description of the property. If the term of the lease is one year or less, it can be either written or oral. An oral agreement for more than one year is not an enforceable lease. Therefore, if the agreement lasts more than one year, it must be in writing to be enforceable.

**Creating a Periodic Tenancy**

If a tenant does not vacate the premises at the end of a lease, Wisconsin Statutes § 704.25(2) allows the landowner to create a year-to-year periodic tenancy by accepting a payment of rent or other action that indicates the landowner intends to

allow the tenant to remain in possession of the land. A periodic tenancy has the same terms the original lease except that any right of the tenant to renew or extend the lease, or to purchase the premises, or any restriction on the power of the landowner to sell without first offering to sell the premises to the tenant, does not carry over to the periodic tenancy. For agricultural land, the length of the periodic tenancy is one year.

### **Terminating a valid lease**

A valid lease cannot be terminated before the end of the lease, unless both parties agree in writing or the terms of the lease are violated. For example, a landowner can terminate a lease if the tenant fails to pay rent. The following is the appropriate procedure to terminate both written and oral leases if the tenant fails to pay rent or violates another condition in the lease:

1. *One year or less*: The landowner must notify the tenant and allow five days after giving the notice to pay rent and/or comply with the terms of the lease. If the tenant fails to do this, the lease is terminated.
2. *More than one year*: The landowner must notify the tenant and allow at least 30 days after giving the notice to pay rent and/or comply with the terms of the lease. If the tenant fails to do this, the lease is terminated.

### **Terminating a periodic tenancy**

To terminate a agricultural periodic tenancy, the landowner or tenant must give a 90-day notice before the end of the annual rental period. Importantly, a periodic tenancy can be terminated only at the end of the rental period. As a result, both parties are locked into a one-year lease if the landowner accepts rent from a tenant who remains in possession after the termination of a valid lease. As with a valid lease, a periodic tenancy can be terminated without regard to proper notice if both parties agree on another method of termination or if either party violates the terms of the lease, such as non-payment of rent.

**Example:** Now assume that Bob and Jan had a valid, ten year written lease. Because Bob and Jan are good friends, Bob allowed Jan to remain on the land after the lease expired. Bob continued to accept rent from Jan under the same terms of the initial lease that expired at the end of the lease term. Bob has been accepting rent from Jan for the past five years without commencing a new written lease. Now, Bob wants Jan off of his land, but is unsure of how to properly do this.

In this situation, Bob and Jan have created a periodic tenancy. In *Vander Wielen v. Van Asten* the court held that Wisconsin Statute § 704.25 requires an agricultural landowner to choose among three courses of action when a tenant remains in possession of the leased premises after the expiration of the lease:

1. The landowner may commence an action to remove the tenant

2. The landowner may reach an agreement with the tenant regarding the terms of the tenant's post expiration occupancy by creating a new valid lease (written or oral).
3. If neither of the first two have occurred, the landowner may accept rent from the tenant for the tenant's post-expiration occupancy, thereby creating a periodic tenancy.

The ruling on this case gives two options if the landowner does not remove the tenant: Both parties can commence a new valid lease or the tenant becomes a periodic tenant if the landowner accepts rent.

### ***Issues:***

Two important issues arise from Bob and Jan's situation.

1. How does Bob know when the lease started so he can give proper notice and terminate the tenancy at the end of the period?
2. Was an oral agreement made after the expiration of the initial lease?

### **How does Bob know when the lease started?**

In the event that Bob wants to remove Jan from his land at the end of a period, it is important for Bob to know when the periodic tenancy began so he can give Jan a 90-day notice. The year-to-year tenancy began on the day after the valid lease ended, but that may be hard to determine in some situations. Unfortunately, there is no definitive answer to this situation in the Wisconsin Statutes. As a consequence, both the landowner and the tenant assume a substantial amount of risk by not organizing and properly documenting the terms of their periodic tenancy. If both parties are unsure of the exact commencement of the periodic tenancy, they should review the expiration date of the written lease and base the year-to-year periodic tenancy on those terms. In the event that neither party has a valid copy of the written lease, a possible solutions are to use the common practice for comparable leases or the current calendar year.

### **What if Bob and Jan entered into an oral agreement after the expiration of the initial lease?**

Under Wisconsin Statute § 704.03 (1), an oral agreement for one year or less is a valid lease, which cannot be terminated before the end of the lease, unless the terms of the agreement are violated. Jan could argue that Bob's acceptance of Jan's rental payment after the expiration of the valid lease was an oral lease as opposed to a periodic tenancy. The problem with this scenario is that a valid lease must have a definite commencement and expiration date. Even if the Bob agreed to rent to Jan for a definite period of time, it would be difficult to prove this in court if it is not in writing or there are no witnesses. This is the key distinction between a valid lease and a periodic tenancy. A valid lease, either written or oral, must have a definite commencement and expiration date. Conversely, a periodic tenancy on agricultural

land is automatically a year-to-year tenancy. In this situation, the occupancy has been on a year-to-year basis for the past five years (written lease expired five years ago), which implies that this is a periodic tenancy. In addition, it would be hard to prove that they have an oral lease because an oral lease can be for only one year or less, and the previous lease expired five years ago.

**Conclusion:**

Agricultural leasing arrangements create a lot of issues due to the complex statutes. Furthermore, there are very few cases that even address the issue, which makes it unclear how a judge would interpret the law. Therefore, there is a substantial risk for both parties if they do not have a written lease because there is not a previously established precedent for a court to apply to resolve disputes about terminating a periodic tenancy. As a result, it is imperative that all of the parties involved in an agricultural lease keep good documentation of all relevant evidence. By doing so, both parties will mitigate the risk associated with taking an agricultural lease dispute to court.