

Legal Considerations for Hunting Leases

Inting ground is a precious commodity in Iowa. Hunters often approach landowners looking for ground to hunt. Whether to grant such permission and to whom to grant that permission is a complex decision. This fact sheet is designed to highlight basic issues landowners should consider when deciding whether to let someone hunt their ground and how to structure that relationship. It also reviews generally suggested hunting lease provisions. It is not designed to be a substitute for legal counsel.

Liability

Perhaps the most important issue landowners should consider in responding to requests to hunt on their property is whether they will be subjecting themselves to new liability for any injuries incurred by the visitors or because of the visitors.

In 2013, the Iowa legislature revised the Iowa Recreational Use Statute, which encourages landowners to open their property to others for recreational uses (including hunting), to ensure that landowners are immune from liability related to recreational entrants for all but injuries resulting from the landowner's willful or malicious acts. The statute also expressly states that the landowner does not "assume responsibility for or incur liability for any injury" caused by an act or omission.

This protection, however, only applies if the land-owner directly or indirectly invites others to use the land for recreational purposes without charge. If the landowner charges a fee (through a hunting lease, for example), the landowner would then owe a higher degree of care to ensure the property is safe for use. This duty includes ensuring the premises are safe and warning of dangerous conditions. This means, for example, that a landowner may be liable for resulting injuries if a hunter steps in a large hole on the property and breaks his leg

or accidentally discharges his gun. Although a waiver of liability may serve to offset this risk for adult hunters, it is important for landowners to discuss potential hunting leases with both their insurer and legal counsel to protect against unwanted lawsuits.

Hunting Lease Provisions

Most hunting leases are not actually leases at all, but licenses. A license, as opposed to a lease, is a private grant of right to *use* real property for a particular purpose. As such, a hunting lease offers *contractual* rights, not an estate in real property. In other words, the parties do not take on an actual landlord-tenant relationship, and the landowner is not subject to burdensome landlord-tenant statutory provisions. The parties are bound by the terms of their contract.

Although an oral agreement for a term of one year or less would be legally enforceable, it is advisable to have a written hunting lease. It is also important to seek legal counsel to draft such a lease to ensure that the specific needs of the parties are met.

In general, however, a hunting lease should include the following provisions:

Clear Identity of the Parties

A hunting lease should clearly identify by name the persons entitled to hunt under the agreement. It should state whether the party to the lease can bring guests onto the property and whether children under the age of 18 are allowed to hunt on the land.

Description of the Property

Any hunting lease should specify the exact property upon which the party to the contract can hunt. It is advisable to include legal property descriptions, as well as a map if specific areas of the property are off-limits.

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Terms of Use

The hunting lease should clearly set forth the specific terms under which the party to the contract can hunt. Is the permission for a particular season only? Is it for rifle or bow hunting only? Does it allow any legal hunting for a term of one year? Is it is multi-year contract? Perhaps a landowner will want to offer a multi-day hunting lease to a party or group. These are all possibilities, but the document should specify the exact terms of the permission granted.

Termination and Options to Renew Provisions

The contract should specify the particular grounds and the manner under which the landowner can terminate the contract, including for misuse or dangerous use of the property. The contract should also specify whether the contract will automatically renew or terminate on a particular date.

Waiver of Liability

As discussed above, liability should be a prime concern for landowners contemplating a hunting lease. Landowners should acquire a waiver of liability from the hunters as part of the lease. Through a properly drafted waiver, the landowner should be able to obtain the same

level of liability protection offered by the Iowa Recreational Use Statute as to all adult hunters. Such a waiver would not provide protection, however, for children under 18. Landowners are advised to seek legal counsel to draft a legally enforceable waiver. They also may want to include an indemnification under which the hunters agree to indemnify the landowner for any damages caused to others by the hunter or the hunter's activity on the property. They are also advised to discuss any hunting lease in advance with their insurer.

Payment Terms

A hunting lease should include the terms of payment required under the lease, including the amount, the due date, the manner in which payment is to be made, and the remedy in the event of nonpayment.

As noted above, Iowa hunting land is a precious commodity. Through a well-drafted hunting lease, landowners can share their resource with others and, in exchange, receive a monetary benefit. They should remember, however, that any such agreement should be carefully drafted and cleared with their insurers. Failing to take such measures could place them in a liability landmine.

. . . and justice for all

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