

Wildlife Leases and Liability Issues on Private Lands

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Hunting, fishing and nature tourism are popular recreational pastimes in the United States and in Arkansas. Almost one-third (31%) of Arkansas residents hunt and more than half (61%) participate in wildlife-watching activities, according to the 2001 National Survey of Hunting, Fishing and Wildlife-Associated Recreation. In 2001 hunters spent \$517 million in Arkansas, of which 20% was from non-residents. On average, hunters spent \$1,179 per hunter and an average of \$25 per day. Those who enjoy watching wildlife spent \$244 million, with only 4% from non-residents. Wildlife-watchers spent an average of \$290 per participant in Arkansas.

These expenditures by hunters and wildlife watchers are, or could be, an income opportunity for some farmers and landowners in Arkansas. The legal aspects are a daunting

barrier for those considering these types of income opportunities on their land. Nature tourism has taken root in a few communities; however, hunting lease agreements are more common. We will focus on legal considerations for hunting leases, although these concepts can be applied to other types of wildlife recreation enterprises. As with any legal agreement, always check with an attorney first before entering a contract.

Why a Lease Agreement?

In today's world, leasing land based on a handshake agreement is asking for trouble. Miscommunication between the user and the landowner or an accident on the property could result in a lawsuit. The Arkansas recreational use statutes take some liability pressure off landowners; however, the statutes offer only limited protection particularly when a

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Wildlife watching is a popular activity, though the number of hunting leases far exceeds other types of wildlife leases in Arkansas.

landowner benefits financially from the agreement. The effort taken to set up a sound lease agreement from the start will avert potential problems later.

For hunters and wildlife watchers, a lease agreement offers a place to be outdoors with friends and family or an escape from crowded conditions on public lands. For landowners, a wildlife lease can help offset increasing agriculture production costs and pay property taxes. A strong market of potential customers is needed, and the land needs to be located where wildlife are abundant. There are other benefits as well. Those who sign a wildlife lease have a vested interest in monitoring the property and reducing unwanted trespassers. Lessees may voluntarily improve wildlife habitat at no additional cost to the landowner.

Nationally, wildlife professionals debate the advantages and disadvantages of leases for the general “good” of wildlife. Traditionally, wildlife has been a by-product of agriculture and forestry. Wildlife habitat had no monetary value compared to a rice field or timber stand. Some biologists believe that by adding value to wildlife habitat, more landowners are willing to improve habitat because of lease agreements. However, others argue that leasing changes our perspective of wildlife, that wildlife will no longer be a free resource for everyone to enjoy. They argue that as leases grow in number, only the wealthy will have the opportunity to view, hunt and enjoy wildlife on private lands.

Despite these arguments, lease agreements can provide access to hunters and provide landowners with a source of supplemental income; however, fee hunting can also be a source of liability if not approached properly. This brief fact sheet provides landowners and hunters a general understanding of lease mechanics and liability issues in preparation for counsel with a local attorney. As with any contract, your particular circumstances, Arkansas liability and wildlife laws, and county ordinances need to be studied carefully by a skilled professional before formalizing any agreement. We hope this information will provide landowners and hunters with background for further discussions with their local attorney before setting up and signing a wildlife or hunting lease.

Getting Started

A written hunting lease is a vital tool for protecting you and your assets if an accident or incident should occur on your leased property. Avoid informal arrangements with hunters on your property. A written contract may not guarantee that you will be absolved of wrongdoing in a court of law.

However, without a written agreement, it will be your word against someone else's with little to substantiate either side. Additionally, the legal system places many responsibilities on the landowner, whether or not the landowner had direct knowledge of their lessee's actions. Having (1) a written agreement that has been reviewed by an attorney, (2) adequate insurance coverage and (3) a release or waiver can help protect you in the event something unfortunate should happen on your leased property.

Before talking with a local attorney about drafting a hunting lease, consider these three points:

- Have a clear understanding of what you want to occur on your property. What are your goals for the property? Are they in conflict with the goals of hunters? Are you willing to allow hunters on the property all year long? Do you want to retain use of some parts of the property?
- Consider whether the wildlife population is of sufficient size to allow hunting on your property. Do you want to limit the number of hunters or the harvest? If there are too many deer, will you require that hunters harvest a doe before taking a buck? Will you allow waterfowl hunters only on certain days and set aside some “rest” days for the ducks? Do you want the hunters to help improve your property for wildlife in lieu of a larger payment? How involved do you want to be in their management decisions? Talk to a wildlife biologist, read a book about wildlife management, talk to your neighbors and perhaps implement a census technique to determine the status of wildlife populations on your property and in your area.
- Be sure to determine your price before setting up a hunting lease. Consider contracting with a “wildlife broker” who links hunters with landowners and can determine an appropriate price. Brokers can be real estate agents, hunting guides, or professional forestry or wildlife consultants who sublease hunting rights for landowners. If signing with a broker, initially sign a minimal binding contract in case the situation isn't to your liking. Determine a price by reviewing local advertisements for hunting leases that are similar to yours in land acreage and hunted wildlife. Talk with neighbors about the “going rate” for your area. To learn more about pricing, call wildlife biologists working for timber companies. The amount you charge will depend on the type of hunting lease and the recreational experience you offer, as described in the next sections.

Before entering a lease agreement, consider interviewing potential lessees before signing the lease agreement. One approach is to send an application form to those who respond to your advertisement. Collect information about their previous hunting-lease experiences and talk to these landowners from whom they have leased before. Investigate whether they have had any hunting law violations or if they have taken a hunter education course. Ask their long-range plans for the lease, such as establishing a hunting club and who else they anticipate would use the property. Be aware, however, that it is illegal to discriminate based on race, ethnicity, age, gender or physical handicap.

Types of Hunting Leases

The duration of the lease and type of services available affect the design of your hunting contract and the fees you charge. Three types of leases are annual, season and short-term agreements.

- **Annual leases** – This year-long lease typically includes the right to take all game species during hunting and fishing seasons. Typically, fees are assessed per acre and due in a lump sum. Contracts offer the option for renewal at the end of the lease agreement. Repeat lessees are more likely to make land improvements and enhance wildlife habitat.
- **Season leases** – In this lease agreement, a landowner can specify the game species to be taken, and therefore limit the time of use to correspond to lawful hunting seasons. For example, a landowner can sell turkey-hunting privileges to one group of hunters, elk-hunting privileges to an individual and deer-hunting privileges to another group of hunters, given that the hunting seasons do not overlap. Higher profits are achievable by marketing to various hunter audiences.
- **Short-term agreements** – These include daily, weekend or weekly hunts and are sometimes called “package hunts.” Typically, day leases are more successful near populated areas where the demand for hunting opportunities is great. A daily fee is charged and hunters only pay for the times they hunt. Examples are dove or waterfowl hunts. “Package hunts” for a day, weekend or week-long hunt are intensively marketed and managed. They may include guide services, shooting or skeet ranges, equipment rental, dogs, game cleaning, lodging, meals and entertainment.

Farmers offering leased dove hunts oftentimes charge a daily fee per gun.



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Contract Basics

Hunting leases are essentially **contracts** between two parties. Contract and property laws drive the framework for hunting leases. Hunting leases must also comply with hunting regulations that are made and enforced by the Arkansas Game and Fish Commission.

Bring the following information with you when meeting with your attorney. Any hunting lease should minimally contain the following features of a basic contract:

- Landowner’s name and address
- Hunter’s name and address (or a place on the lease for adding this information)
- Who is entitled to enter the landowner’s land for the purpose of hunting
 - List the name of the lessee.
 - Landowner lists other agents, employees, family members, invitees or visitors with hunting privileges, as well as guests without hunting privileges. Landowner agrees to not allow others access to the property.
 - Landowner requires that the lessee screens and monitors other hunters and guests on the property subject to the terms of the lease agreement.
- Property description – A legal description including county and state; a map is optional but could be beneficial.

- Duration of the lease – Indicate a beginning and ending date that the hunter is allowed on the property.
- Rental payments
 - Indicate how the payment is to be made (daily, weekly, monthly, yearly, per person)
 - Indicate the amount of money for the entire period and the payment due date(s)
- Security deposit – If one is desired, indicate how much and when it is due.
- Restrictions on use
 - Is hunting restricted to certain game? Will you allow deer hunting only, or deer and turkey, or any game? What about using the fish pond?
 - Is hunting restricted to certain seasons or certain days of the season? Will you allow hunters on the property outside the hunting season to scout for game prior to the hunting season?
- Who maintains liability insurance for use of the property
 - If the hunter is required to maintain liability insurance, be sure to state the limits for bodily injury and property damage that are required. Have a copy of the policy and/or the name, address and telephone number of the insurance company and the policy number on file for your easy access.
 - If the landowner carries liability insurance, will fees be incorporated into the lease rental payments?
- General rules:
 - Define safe and unsafe behavior – list your expectations of conduct. Indicate if you require that they have attended a hunting safety course.
 - Good neighbor relations – Indicate if you want to restrict placement of hunting or tree stands and be specific. For example, indicate if the stand is to be more than 100 yards from the inside of the property boundary. Describe the proper actions or procedures if a wounded deer runs onto your neighbor's property (e.g., do they call the neighbor, or do they have permission to retrieve?).
 - Hunting clubs – It is suggested that the landowner have a list of all club members including their name, address, driver's license number, date of birth and contact information, plus identify the club officers.
- Supplemental feeding arrangements – will you allow feeders or development of food plots?
- List specific “do-not’s” – for example:
 - Don’t damage trees, crops, buildings, fences, roads or improvements.
 - Don’t cut growing timber.
 - Don’t build permanent structures.
 - Don’t sublease.
 - Don’t litter.
 - Don’t leave the gate open.
 - Don’t break hunting, fishing or game laws.
- List specific “do’s” – for example:
 - Report law violations to the landowner.
 - Restrict use of vehicles from areas that shouldn’t be disturbed, such as creek bottoms, highly erodible areas or other sensitive areas.
 - Restrict releasing or stocking of animals not sanctioned by state law or the landowner – for example, many hunters enjoy hunting feral hogs, but hogs reproduce quickly and compete with native wildlife (such as deer, wild turkeys and squirrels) for acorns and are known to destroy habitat.
 - Communicate frequently and provide accessible phone numbers.
 - Allow access at all times to the landowner and his/her family.
- Termination – Conditions in which either party can terminate the contract, such as with a 30-day written notice sent to the address provided by the other party.
- Renewal agreement – Conditions for renewing the contract, such as signing a new contract more than 30 days in advance of the current contract’s expiration.
- Signatures of the parties are required – Make signature lines for your name for each of those to whom you are leasing. Be sure to include dates for the signatures.

More About Insurance

As a landowner, it is desirable to seek liability coverage for hunting activities that will occur on your land. Typically, hunting lease activities are covered under a supplement or endorsement to your general liability policy. Check with your insurance agent for coverage under your general farm insurance policy or other appropriate insurance policy for this coverage. Hunting leases are sometimes covered as an

“incidental business pursuit,” but ask if this is tied to gross receipts for the activity. Gross receipts may be limited to an amount, and therefore additional coverage may be necessary. Read your insurance policy carefully and engage in dialogue with your insurance broker. Some policies may have exclusions from coverage for certain types of injuries occurring on your property and may include common hunting injuries (e.g., falling from a tree stand). Alternatively, you may need to upgrade your existing policy, develop an umbrella policy, seek endorsements for recreational activities, or seek supplements from a specialized insurance broker or agent.

Another option is to self-insure by setting aside monies to cover any loss which may occur on your property. However, due to the potential for high jury awards should an accident occur and the landowner is found liable, self-insurance may not be a desirable route. Check with an attorney to discuss insurance options that are appropriate for your circumstances.

Other choices used in conjunction with carrying your own insurance allow the hunter to furnish his or her own liability coverage. This choice particularly applies to hunting clubs. A hunting club may be able to purchase insurance customized only for the time they use your property. If requiring the lessee to carry insurance, employ the following common sense measures:

- Get and keep a copy of the hunter’s insurance policy and make sure it has not expired from lack of payment.
- Read the policy and make sure it covers the activities contemplated by the lease, including maintenance and wildlife management practices.
- Check that the policy is with a reputable firm and financially solvent insurance company.
- Make sure you are named as the insured and that the policy specifically identifies the land where the hunting will take place.
- Make sure the hunters and other users follow the terms, conditions and provisions of the policy.
- Be sure that the policy indemnifies you if a judgment is obtained against you and covers your legal fees and expenses if you are sued.
- Make sure the hunters and other users confine their activities to the location specified in the policy.



Waterfowl leasing is a good source of supplementary income for Arkansas landowners.

Release and Indemnity Agreements

As further protection, you may also require that the lessee sign a release to remove you from legal liability for injuries that the hunter may receive while on your property. A release is also a contract and requires that both parties agree to the conditions in order to be upheld in court.

Either the release or the hunting lease contract should contain indemnification statements that reimburse or exempt the landowner for any bodily injuries or property damage the hunter may cause to him/herself or others while using the property (covering fees and expenses). However, indemnification agreements only work if the party indemnifying you is solvent. Furthermore, anyone injured by the hunter is not bound by the indemnification agreement – the agreement is only between you as landowner and the hunter. The agreement does not protect you from direct liability from others.

A release and indemnity agreement contains the following components:

- Recognition that the lessee will be engaged in hunting and shooting activities.

- Release the landowner from all liability and injury, regardless of the severity or manner of injury, and how it was caused.
- Lessee waives all rights to make a claim against property damage or loss.
- Recognition that there are many ways in which injury or property loss may occur, and the lessee assumes full responsibility for his/her actions which may result in injury, death, or property loss or damage.
- Specific listing of causes for injury, such as tripping, stumbling, falling, slipping, climbing, contact with ticks carrying Lyme disease and other potential hazards that may or may not involve guns or bows.
- Recognition of self-responsibility for avoiding obvious hazards and objects that could cause harm, and willingness to assume risks.
- Recognition of giving up rights by agreeing not to sue or make claim against the landowner.
- Aware that he/she has the right to seek an attorney's opinion before signing this agreement.
- State that hunter has attended and passed Hunter Safety Classes that are required by the Arkansas Game and Fish Commission.
- Agree to abide by the rules and regulation in the contract and those of the Arkansas Game and Fish Commission.
- Agree to conduct him/herself in a sportsman-like manner and will not perform acts that will endanger other people.
- Indemnify the landowner from the lessee's intentional or negligent acts.
- Agrees that has completely read this agreement and understands it thoroughly.
- Printed name, address, telephone numbers (home, business, emergency), birth date and signature of lessee (hunter).

The release and indemnity agreement needs to be tailored to an individual's particular lease circumstances. The hunting lease contract, including the release and indemnity agreement, should be drafted and reviewed by an attorney before being signed.

Risk Management

Having a written hunting lease contract that includes release and indemnification agreements, plus having insurance coverage, will reduce the possibility of your assets being taken in case of an accident or incident on your property. These agreements can never fully protect you from all lawsuits should accidents occur on your property. But there are additional measures that landowners can take to minimize their liability to anyone who enters their land.

Generally, there are different legal status classifications for those entering your land. These are (1) trespassers, (2) licensees and (3) invitees. Risk management strategies differ for these categories, although some courts are moving toward a standard of "reasonable care" that would apply regardless of the status classifications. Following is a brief description of these classifications and strategies for reducing risk:

A **trespasser** is anyone who enters or remains on your land without your consent. For example, this would include anyone who hunts on your land without your permission or perhaps enters your land to commit a crime. Your liability to a trespasser is slight; however, your liability or "duty of care" increases if the trespasser is a child. Lawfully, you cannot intentionally injure a trespasser nor use more force than is necessary to remove a trespasser. You cannot recklessly endanger a trespasser.

A **licensee** is anyone entering your property with your permission for his or her own purposes or business interests. This classification includes social guests, unsolicited sales persons and hunters permitted to hunt without paying fees to the landowner. The landowner assumes more responsibility for licensees than for trespassers. A landowner cannot intentionally injure or endanger a licensee and, therefore, should take steps to warn licensees of dangerous conditions on the land.

An **invitee** is anyone who comes onto the land for the landowner's financial benefit. Invitees are owed the greatest responsibility for notification of dangerous and potentially risky circumstances. The landowner must take reasonable steps to ensure their safety while on the property. Invitees should be warned of all existing and known dangers, such as old water wells, dangerous animals like bulls or dogs, a steep cliff, potential flood zones, rotting tree stands, falling limbs or trees from an insect infestation or other hazards. The best solution is to eliminate any of

these dangers prior to leasing the property. If not possible, then post signs at danger points and/or notify the invitee in writing of the dangers and risks.

Arkansas, like most states, has recreational use statutes (A.C.A. 18-11-301 to 307). Recreational use includes hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, spelunking and viewing or enjoying a historical, archeological, scenic or scientific sites, and any other activity undertaken for exercise, education, relaxation or pleasure on land owned by someone else. The statues provide some protection to landowners, and thus encourage landowners to make recreational areas available to the public by limiting liability for injuries. However, the hunter cannot assume that the property is safe when given permission to hunt. Further, the statute establishes that giving someone permission or inviting someone on the property constitutes a different status from the legal status of an invitee or a licensee. The statutes protect landowners from liability for injuries to people or property caused by hunters on the landowner's land. Generally, landowners are also not liable for injuries resulting from natural or artificial conditions, structures or personal property on their land (A.C.A. 18-11-303, 1987 & Supp. 2001). An exception is "malicious failure" to warn or guard against what is considered an ultra-hazardous condition.

If a fee is charged, the statutes offer some limited liability (A.C.A. 18-11-305, 1987 & Supp. 2001). Since charging a fee to a hunter may affect a landowner's immunity from liability, other arrangements should be considered. A "charge" is considered admission fees for permission to use the property, but does NOT include: (1) sharing game, fish or other products, and (2) contributions in kind, services or monies paid to reduce or offset or eliminate costs from hunting, such as covering insurance costs. Therefore, in some circumstances, landowners and hunters may consider mutually-beneficial options besides charging a fee.

Posting of Property

The state law on posted lands requires written consent of the landowner or a lessee to enter posted property (A.C.A. 18-11-401). Posting can be accomplished using either signs or paint (A.C.A. 18-11-403(a)(2)). Posting methods are as follows:

- **Posting with signs** – Signs should state the words "POSTED" or "NO TRESPASSING" in all capital letters at least 4 inches high and be

readily visible to a person approaching the property. On forested land, the signs should be placed no more than 100 feet apart and at each road entrance. On cultivated land, orchards, pastures, impoundments and other locations, the signs should be placed no more than 1,000 feet apart and at each road entrance.

Table 1. Posting paint specifications for Arkansas.

Pigment	62.6%
	Titanium Dioxide	22.2%
	Calcium Carbonate	77.8%
Vehicle	37.4%
	Oleoresinus Vehicle	47.2%
	Petroleum Solvents	45.4%
	Driers, wetting agents and tinting materials	7.4%

The type and color of the paint used for posting is prescribed by State Forestry Commission regulations (A.C.A. 18-11-405).



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When posting signs on your property, avoid nailing signs to trees. Instead, use fence posts or posting paint.

- **Posting with paint** – The color of posting paint is indicated in Table 1. Stores selling paint often-times offer this pre-mixed color, particularly before hunting season. Vertical paint marks must be at least eight inches in length and placed on trees or posts no more than 1,000 feet apart and at each road entrance. The paint mark should be made between 3 and 5 feet from the ground and be readily visible to anyone approaching the property.

Hunting with Written Permission

In June 2002, the Arkansas Game and Fish Commission passed a regulation requiring hunters to obtain permission before hunting on private property. It is unlawful for a person to hunt, fish or trap wildlife on someone's private property without having verbal or written permission from the landowner or lessee. If the property is lawfully posted or fenced according to the state statute, the hunter must carry written permission. Written permission must include the: (1) name of person permitted on the property, (2) signature and telephone number of the landowner or lessee and (3) beginning and ending dates of the permission period. Written permission is not required of close relatives of the landowner or lessee – verbal permission is sufficient. To initiate enforcement of this statute on private property, the landowner must ask an Arkansas Game and Fish Commission wildlife officer to monitor the property.

Closing Remarks

With careful planning, hunting leases can be an opportunity for diversifying an agricultural enterprise or offsetting property expenses for Arkansas landowners. Note that laws and regulations change quickly. Therefore, information in this fact sheet may become outdated at any time. A sure way to obtain the best possible hunting lease agreement is to consult an experienced, local attorney. The lease agreement needs to be tailored to the particular circumstances and prepared in accordance with Arkansas state statutes. Insurance agents should be contacted about coverage for hunting, particularly if a fee is charged. Oral agreements are not advisable in

the legal climate of today. A little upfront work could save many headaches later. Being prepared for the unexpected is the best safeguard against potential liability and risk. Finally, you should periodically check with the Arkansas Game and Fish Commission to determine whether changes have occurred in any regulations that might affect hunting leases or your liability as a landowner.

Disclaimer

This fact sheet information is provided as an educational tool and is not a substitute for individualized legal advice. Anyone wishing to implement a lease agreement should consult an attorney and insurance representative. Utilization of these materials by any person constitutes an agreement to hold harmless the authors and the University of Arkansas Cooperative Extension Service for any liability, claims, damages or expenses that may be incurred as a result of reference to or reliance on the information contained in this fact sheet.

Resources

A reference for this fact sheet was "Recreational Access to Private Lands: Liability Problems and Solutions" by John D. Copeland. Copies can be purchased from the National Center for Agricultural Law Research and Information, University of Arkansas School of Law – 147 Waterman Hall, University of Arkansas, Fayetteville, AR 72701, (479) 575-7646.

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