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EXTENSION

Establishing a Hunting Lease on Your Land: Legal Considerations for Wildlife-Related Recreation



Disclaimer: The author is a wildlife professor and not an attorney. This publication is intended to educate readers about liability issues associated with recreational hunting occurring on their properties. Before executing a hunting lease agreement, you should consult with an attorney.

In Mississippi, the responsibility of a landowner to protect visitors against dangers or hazards on private property is determined in part by the legal classification of the person who is on your property. The legal status of an individual on your land can be trespasser, licensee, or business invitee.

Trespasser

You have very little responsibility to trespassers on your private property, but you should not intentionally or willfully harm them. Trespassers have no legal permission or basis for being on the land, so you do not have a duty to ensure their safety on the property. If you are having trouble with a trespasser, try to take a digital photograph of the license plate of their vehicle while they are on your property. Send the photograph to your local sheriff's department or a conservation officer with the Mississippi Department of Wildlife, Fisheries, and Parks (1-800-BE SMART) with a message that the individual is trespassing on your property. Complete a trespass affidavit with your local law enforcement personnel for the arrest of trespassers on your property.



If you know the violator's name and contact information, write them a letter informing them that they are to remain off your property and that you will pursue enforcement actions and legal fines for trespassing if they come back on your property. Trespass statutes normally have increasingly severe penalties and potential jail time for second and third offenses, and in instances where the landowner can demonstrate prior warnings to a trespasser.

Avoid escalating a confrontation directly with a trespasser. Especially during hunting season, these individuals may be carrying guns. It is safer to let local law enforcement personnel deal directly with trespassers and wildlife poachers on your land.

You are not required to post "no trespassing" signs on your land, but it is highly advisable. Signs will help define your property boundaries and will help eliminate unintentional trespassing on your land from hunters who may inadvertently cross your property line.

Licensee

The next level of legal classification of an individual on your land is a licensee. A licensee is someone you grant permission to be on the property; however, you receive no direct benefit from the arrangement. For example, your neighbor asks if he can fish in your pond and you allow him to do so. You receive no compensation or direct benefit in this occurrence. Therefore, you do not have a heightened responsibility for the guest's safety while on the property.

Even so, you should warn your guest of any unforeseen dangers on the property, such as Ferdinand the bull in the fenced pasture adjacent to the pond. In addition, your active negligence as a landowner cannot harm the guest. In other words, you should not intentionally let ornery Ferdinand into the pasture adjacent to the pond while your neighbor is fishing.

Business Invitee

The last classification is a business invitee. This is a person who pays for access to the property and should be given special consideration to ensure that their experience on your land is safe. Some examples include:

- a group of schoolchildren who paid admission to visit your pumpkin patch.
- hunters who you have given permission to hunt on your land.
- visitors to guided hunts or bird watching excursions on your property.

These guests are business invitees, and the landowner benefits under this arrangement.

Do you need to make your property "perfectly" safe for these guests? The short answer is no. However, it is wise to do what is reasonable and prudent to make the property safe. If there are unforeseen hazards on the property—an open cistern or a bridge that is in need of repair—warn your guests to avoid these potential hazards. Better yet, remove or repair the hazards. Document your actions to make the property safe, and provide written communication to your guests about safety issues on your land. Keep these documents in a safe place for use and reference in the future.



Hunting Leases

One option for income diversification on your land is a recreational hunting lease. A hunting lease is a legal arrangement or contract whereby a landowner grants access to his or her property for recreational hunting for a certain period of time in exchange for financial compensation or services. Leasing land access for recreational hunting is a non-intensive way to diversify income on your property. In addition, offering a hunting lease to a group of law-abiding hunters can help absentee landowners prevent trespassing and wildlife poaching.

In Mississippi, the type of land cover on your land is important to potential hunting lessees. Land tracts that are dominated by forests, particularly mature hardwood forests or mixed pine hardwood forests, are more often sought after for hunting properties. These forests provide superb cover and food (acorns, hickory nuts, beechnuts, and fleshy fruits) for white-tailed deer, turkey, squirrel species, and quail. Lands containing wetlands or riparian areas (land next to water and streams) and bottomland hardwood forests are beneficial to many wildlife species, including waterfowl, and these properties command higher lease prices.

Enhancements on your land will increase the price you can charge for a hunting lease. Roads or trails on the property are beneficial because they allow hunters to move more freely over the tract. A secondary benefit is reduced motorized travel over the rest of the property and less chance of visitor accidents and property damage. Limiting vehicular traffic to roads and trails can also prevent erosion issues and potential damage to trees and topsoil.

Often, hunting lessees are allowed to erect hunting stands and plant vegetation for wildlife. However, if the landowner provides these amenities to potentially higher paying clients, prices for these selective leases increase considerably. Providing lodging on properties to allow clients to stay for extended times is a value-added amenity that increases the price hunting lessees will pay. Amenities such as an outside fire pit, firewood, bathroom facilities, clotheslines, trash cans, and potable water are conveniences that hunters are seeking and willing to pay extra for. You may not want to provide all of the above items, but doing so will increase the value of the land.

Hunting leases should be well written and clearly identify the parties in the lease agreement. In Mississippi, unincorporated groups of individuals are not legally recognized. Therefore, you should consider requiring hunting associations to become incorporated by contacting the Mississippi secretary of state's office (<https://www.sos.ms.gov>) and completing required documentation. As an example, if the "president" of the ABC hunting club signs a lease representing an unincorporated club, the landowner arguably only has an agreement with the club president and not the entire group.

Requiring a club to become a legally incorporated entity addresses issues of authority. Another option for the hunting club is to organize as a not-for-profit entity, which is a simpler process than a for-profit arrangement. As a last consideration, if the club has no formal entity designation, you should require all members of the hunting group to sign the lease.

In a hunting lease, game species to be hunted should be listed (for example, white-tailed deer, *Odocoileus virginianus*) and any restrictions to the harvest under legal quotas established by state authorities. Also list the methods of harvest allowed (for example, guns and archery or archery only). Always include a legal description of your property in the lease agreement. It is often helpful to include maps of your property to help lessees clearly understand the property boundaries. This can alleviate unintentional trespassing onto neighboring properties. Identify the effective dates of the lease; these can be seasonal, annual, or multi-year arrangements depending on your preference.



Some other considerations for your lease agreement include these:

- Subleasing of property (usually disallowed without landowner's consent)
- Adherence to state game laws
- Damage to live trees and roads
- Confinement of motorized vehicular use to roads on property
- Blinds and stands allowed for use and locations for placement
- Removal of garbage and litter
- Designated camping sites on property or lodging
- Limits on number of hunters and guests to be allowed
- Acceptance of the land "as is"
- Reserving right to conduct timber harvests, farming practices, or other land-use activities and management practices on leased premises at any time
- Reserving right to terminate lease at any time and return a negotiated portion of lease payment back to lessee
- Hold harmless language for any injuries that might occur

Liability

In addition to having a well-composed written hunting lease that is specifically tied to your property, it is recommended that landowners have invitees and guests sign liability waivers before allowing recreational access. By signing a waiver, the lessee or guest is acknowledging the risks involved with being on the property. A waiver also states that the signee holds the landowner harmless in case of injury, death, or damage to personal belongings when the lessee or guest is on the premises.

Owners should purchase liability insurance as an added precaution in the event a hunter is injured while on the property. If litigation occurs, insurance may cover attorney fees and court costs in defense of the landowner. Insurance for hunting lease liability coverage is readily available and affordable. It is also a good idea to require the hunting group to have accident liability insurance and to name the landowner as an additional insured party on their policy. Require proof or certification of insurance coverage where you are shown as an additional insured party.

As an added protective measure, you may consider becoming a business entity, such as a limited liability corporation (LLC), to reduce potential liability exposure. An LLC is a legal entity that offers liability protection to the owner(s) of the LLC. It is treated as a separate "person" in the eyes of the law. In the event of a judgment, a plaintiff might take the assets from the LLC, but not the person (you) who owns the LLC. The owner with beneficial rights in an LLC is a member with interest based on percentages; therefore, a single-person LLC would have 100 percent interest therein, while a husband and wife might be 50/50.

In addition, a landowner can form one LLC for the land and a second, separate LLC for the hunting lease. By offering the hunting lease through an LLC that, in turn, leases the land for hunting from the land-holding LLC, the land is not legally tied to the leasing arrangement. In the event that a legal judgment is won against the land-leasing LLC that offers the hunting lease, the land is not subject to a judgment since it is held within a separate LLC or business entity. Many landowners use LLCs in this manner to reduce risk to their assets; you should discuss this with your attorney. You should follow corporate formalities in operating under an LLC (members should not commingle personal funds with funds from the LLC, and owners should file an online annual report with the Mississippi secretary of state's office).



The following sample hunting lease agreement is for educational purposes only. It is important to check with an attorney before writing and signing a binding legal agreement. You may want your lease to be more detailed or include more requirements to fit your property and interests. **[Example information is in brackets.]**

Sample Hunting Lease

This Lease Agreement (the Lease), entered into as of the **[day]** of **[month]**, **[year]**, by and between **[Lessor's name]**, hereinafter referred to as Lessor, and **[Lessee's name]** (indicate whether an individual, partnership, corporation, or unincorporated association), hereinafter referred to as Lessee.

The parties agree as follows:

1. **PRICE AND TERM OF LEASE:** The Lessor agrees to lease the Hunting Rights, as defined below, on **[number of acres]** more or less, to Lessee for **[dollar amount]** annually, for a term commencing on **[date]**, (the Commencement Date) and ending on **[date]** (the Expiration Date) on the following described property.
2. **PROPERTY DESCRIPTION AND HUNTING RIGHTS:** The Hunting Rights shall consist of the exclusive right and privilege of recreational hunting of **[specific wildlife game species]** on the Land together with the right of Lessee to enter upon, across, and over the Land for such purposes and none other. Exhibit A (attached to lease agreement) contains a legal description of the property (the Land) with property boundaries identified and a map (attached to lease agreement) showing the property referenced in this agreement for recreational hunting lease purposes.
3. **PAYMENT:** The Lessee shall pay to the Lessor **[dollar amount]**, the amount of one (1) year's rent in full, on or before **[date]**, by check payable to Lessor.
4. **COMPLIANCE WITH LAW:** Lessee agrees for itself and its guests to comply with all laws and regulations of the State of Mississippi wherein the Land lies related to recreational hunting of game species listed above on the Land. Any violation of this paragraph shall give Lessor the right to immediately cancel this Lease.
5. **LESSOR'S USE OF ITS PREMISE:** Lessor reserves the right in itself, its Agents, Contractors, Employees, Licensees, Assigns, Invitees, or Designees to enter upon any or all of the Land at any time for any purpose of cruising, marking, cutting, or removing trees and timber or conducting any other acts relating thereto, and no such use by Lessor shall constitute a violation of this Lease. This right reserved by Lessor shall be deemed to include any clearing, site preparation, controlled burning, planting, or other forestry work or silvicultural practices reasonably necessary to produce trees and timber on the Land. Lessee shall not interfere with Lessor's rights as set forth herein.
6. **ACCEPTING LAND "AS IS":** Land will be accepted "as is" by Lessees in terms of conditions or potential hazards located on the property and as to the potential populations of wildlife game species present on the property. This Lease is made and accepted without any representations or warranties of any kind on the part of the Lessor as to the title to the Land or its suitability for any purposes; and expressly subject to any and all existing easements, mortgages, reservations, liens, rights-of-way, contracts, leases (whether grazing, farming, oil, gas, or minerals), or other encumbrances on the ground affecting Land or to any such property rights that may hereafter be granted from time to time by Lessor.
7. **GATES/BARRIERS:** Lessor grants to Lessee the right to install gates or other barriers (properly marked for safety) subject to the written permission of Lessor and the terms and conditions relating thereto as set forth elsewhere in the Lease, on private roads on the Land, and Lessee agrees to provide Lessor with keys to all locks prior to installation and at all times requested by Lessor during the term of this Lease.
8. **ROADS OR FENCE DAMAGE:** Lessee agrees to maintain and surrender at the termination of this Lease all private roads on the Lands in at least as good condition as they were on the date lease agreement was signed by parties. Lessee agrees to repair any fences or other structures damaged by itself or by its guests.

9. **ASSIGNMENT:** Lessee may not assign this Lease or sublease the hunting rights on said Land.
10. **FIRE PREVENTION AND DAMAGE TO TREES:** Lessee shall not set, cause, or allow any fire to be or remain on the Land. Lessee covenants and agrees to use every precaution to protect forests and open ground on the Land from fire or other damage, and to that end, Lessee will make every effort to put out any fire that may occur on the Land. In the event that any fire shall be started or allowed to escape onto or burn upon the Land by Lessee or anyone who derives his/her/its right to be on the Land from Lessee, Lessor shall have the right immediately to cancel this Lease without notice, and any payments heretofore paid shall be retained by Lessor as a deposit against actual damages, refundable to the extent such damages as finally determined by Lessor are less than said deposit. In addition, Lessor shall be entitled to recover from Lessee any damages which Lessor sustains as the result of such fire. Lessee shall immediately notify the appropriate state agency and Lessor of any fire that Lessee becomes aware of on Lessor's lands or within the vicinity thereof. Furthermore, no trees shall be cut or damaged due to installation of hunting stands or by any activities related to Lessee being on Land pertaining to provisions of this lease agreement. If trees are damaged, lessee must pay for damages as specified by the Lessor.
11. **INDEMNIFICATION AND INSURANCE:** Lessee shall indemnify, defend, and hold harmless Lessor, its directors, officers, employees, and agents from any and all loss, damage, personal injury (including death at any time arising therefrom), and other claims arising directly or indirectly from or out of any occurrence in, upon, or at said Lands or any part thereof relating to the use of said Land by Lessee, Lessee's guests, or any other person operating by, for, or under Lessee pursuant to this Lease. Lessee further agrees to secure and maintain a public liability insurance policy (greater than or equal to \$1,000,000) in connection with the use of the Land with Lessor named as insured and with such insurance companies as shall be agreeable to Lessor. Proof or certification of said insurance policy with Lessor shown as insured party will be provided to Lessor. This indemnity shall survive the termination, cancellation, or expiration of this Lease.
12. **MATERIAL TO BE SUBMITTED TO LESSOR:** If this Lease is executed by or on behalf of a hunting club, Lessee shall provide Lessor, prior to the execution hereof, a membership list including all directors, officers, and/or shareholders, their names and addresses, and a copy of Lessee's charter, partnership agreement, by-laws (if any), and incorporation certificate from the Mississippi Secretary of State's Office. During the term of this Lease, Lessee shall notify Lessor of any material change in the information previously provided by Lessee to Lessor under this paragraph.
13. **LESSEE'S RESPONSIBILITY:** Lessee assumes responsibility for the condition of the Land, and Lessor shall not be liable or responsible for any damages or injuries caused by any vices or defects therein to the Lessee or to any occupant or to anyone in or on the Land who derives his or their right to be thereon from the Lessee.
14. **USE OF ROADS:** Lessee shall have the right to use any connecting road(s) of Lessor solely for ingress, egress, or regress to the Land; such use, however, shall be at Lessee's own risks, and Lessor shall not be liable for any latent or patent defects in any such road, nor will it be liable for any damages or injuries sustained by Lessee arising out of or resulting from the use of any of said Lessor's roads. Lessee acknowledges its obligation of maintenance and repair for connecting roads as previously described in this agreement.
15. **SURRENDER AT END OF TERM:** Lessee agrees to surrender the Land at the end of the term of this Lease according to the terms hereof. There shall be no renewal of this Lease by implication or by holding over.
16. **MERGER CLAUSE:** This Lease contains the entire understanding and agreement between the parties, all prior agreements between the parties, whether written or oral, being merged herein and to be of no further force and effect. This Lease may not be changed, amended, or modified except by a writing properly executed by both parties hereto.

17. CANCELLATION: Anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that Lessor and Lessee each reserve the right to cancel this Lease, with or without cause, at any time during the term hereof after first giving the other party thirty (30) days prior written notice thereof. In the event of cancellation by Lessee, all rentals theretofore paid and unearned shall be retained by the Lessor as compensation for making the Land available for lease and shall not be refunded to Lessee.

18. APPLICABLE LAW: This Lease shall be construed under the laws of the State of Mississippi.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be properly executed as of this the **[day]** day of **[month]**, **[year]**.

WITNESS 1

Printed name

Signature

Date

WITNESS 2

Printed name

Signature

Date

LESSEE

Printed name

Signature

Date

LANDOWNER

Printed name

Signature

Date



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