

Options for pasturing animals

Leasing pasture or buying standing forage

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The information in this bulletin is designed for educational use only, and is not intended to serve as legal advice. The sample documents contained in the publication should be filled out only by parties to a legal agreement, or by lawyers authorized to practice law. Seek legal advice before you enter into any legally binding agreement.

LIVESTOCK OWNERS who want to pasture their animals on someone else's land have several options, including leasing pasture or establishing a contract for sale of standing forage. This publication discusses the differences between these two options and explains what to consider if you are planning either type of agreement.

Differences between a lease and a contract for sale of standing forage

If you enter into a pasture lease as a livestock owner, you take on many of the rights and responsibilities of owning the land, unless those rights and responsibilities are specifically delegated to the landowner in the lease.

If you are interested only in the forage and not in the other rights or responsibilities of land ownership, you may want to consider a contract for the sale of standing forage. In such a contract, the landowner retains all the rights and responsibilities of ownership, except for those that are specifically granted to the livestock owner in the contract.

The primary difference between a lease and a contract for the sale of standing forage is that a renter has possession of the pasture (the right to use the property and to exclude others from using it), while a purchaser of standing forage has a right to enter the pasture only for the purpose of managing livestock. By adding terms to either a lease or a contract, you may reallocate each party's rights and obligations to achieve the desired outcome. However, there are two practical differences between a lease and a contract: 1) the number of terms that must be added to document the arrangement the parties have agreed upon; and 2) the default provisions that will govern issues the parties fail to address in the document.

For example, under a lease, a livestock owner has the exclusive right to possession of the pasture during the term of the lease (with limited exceptions that allow the landowner entry to make repairs). By contrast, under a contract for the sale of forage, the landowner retains possession of the property subject to the livestock owner's right to enter to graze livestock.

Therefore, if the livestock owner is to assume many of the rights and responsibilities of land ownership, a lease may be the best way to document the arrangement. If the parties do not want the livestock owner to take on the landowner's rights and responsibilities, a contract for the sale of standing forage may be preferable.

Some of the most important differences between a lease and a contract are discussed in the following sections.

Possession

Unless specified otherwise in the lease, a renter has exclusive possession of the pasture except for the landowner's right to enter (with advance notice) to inspect, make repairs and show the pasture to prospective renters. In an emergency, a landowner may enter in the renter's absence to protect or preserve the premises [Wis. Stat. § 704.5]. Therefore, under a lease, the landowner will not

Examples

(1) Under a lease, the livestock owner is obligated to maintain fences unless the lease states otherwise. Under a contract for sale of forage, the landowner has the obligation to maintain the fences unless specified otherwise in the contract.

(2) Under a lease, the livestock owner has the right to collect fallen tree branches for firewood, unless the lease states otherwise. Under a contract for sale of forage, the landowner has the right to collect fallen tree branches unless stated otherwise in the contract.

have the right to hunt or conduct other recreational activities on the pasture without the renter's permission—unless that right is written into the lease. The landowner must give notice before entering to repair a fence or other facility, and must enter at a reasonable time unless a clause in the lease permits the landowner to enter without notice.

By contrast, an individual buying forage under a contract for sale, does not have the right to exclude the seller from the pasture. The buyer's only right to enter is for the purpose of managing livestock. The buyer requires the seller's permission to hunt or carry out recreational activities on the pasture unless the contract specifies that right.

Liability

Generally, a landowner is not liable for injuries to third parties that occur on leased property. As the possessor of the property, the renter takes on the landowner's obligations with regard to the property's safety. By contrast, the buyer under a contract for sale of standing forage is only responsible for damages caused by livestock.

Liens

As a practical matter, a landowner will have a lien (the right to hold the livestock for non-payment of rent or the contract price) whether the parties employ a lease or a contract [Wis. Stat. § 779.43]. Since Wisconsin has abolished the landowner's special rights to hold a renter's personal property for non-payment of rent, [Wis. Stat. § 704.11] a lease creates very few additional rights for the landowner. The parties can include specific language in either a lease or a contract for sale of standing forage to give the landowner additional rights if the livestock owner does not pay the rent or contract price.

Making the agreement binding

The legal requirements that make a lease enforceable are slightly different than those for a contract. To be enforceable, leases for longer than a year must be put in writing. Contracts for the sale of standing forage must be in writing if the contract is for more than \$500, or if it cannot be performed within one year from the contract's date.

There is an exception to the writing requirement if the renter takes possession of a pasture and pays rent periodically. This often happens at the end of a written agreement. In that case, a year-to-year (periodic) lease is created, which gives both parties the right to continue the lease unless one gives proper notice to terminate it (see below) [Wis. Stat. §704.03(2)]. It is less likely that a contract for the sale of forage would be implied without an explicit agreement.

Termination

Contracts and leases for a specified term end without notice at the termination of the contract or lease. A year-to-year lease can be terminated only by giving 90 days notice before the end of the term [Wis. Stat. §704.19(3)].

Self-employment taxes

Income from pasture leases is not subject to self-employment tax, but income from contracts for the sale of forage may be taxable.

Generally, all income from a business is considered self-employment income and is therefore subject to the 15.3% self-employment tax. For purposes of this tax, the Internal Revenue Service uses a broad definition of business income that includes the amount received for the sale of standing forage in many cases. The seller may be able to avoid the self-employment tax if there are only occasional forage sales.

By contrast, rent received for a pasture lease is not considered self-employment income unless the landowner materially participates in the operation of the activity on the land.

Part of the self-employment tax (12.4%) applies only to the first \$61,200 of self-employment income in 1995. Therefore, if a landowner earns self-employment income in excess of \$61,200 from other sources, the self-employment tax will only be 2.9% of the income from the standing forage contract.

A benefit of receiving self-employment income is that it serves as the base for calculating social security benefits. For some taxpayers, the tax paid on self-employment income is more than offset by the increase in social security benefits.

Should the agreement be put in writing?

Generally, it is good business practice to put any agreement in writing if it is important enough to you that you would go to court to enforce it. The written agreement not only provides a legal basis for enforcing your rights—it also serves some of the important functions described below.

- A written agreement helps ensure that both parties have the same understanding of what has been agreed to. With verbal agreements, it is possible for the parties to come away with different interpretations of the agreement. For example, each may think the other is responsible for fence repairs. If the agreement is put in writing and both parties read it before signing, such misunderstandings can be avoided.
- A written document brings potential conflicts to each party's attention at an early stage. This accomplishes two things: 1) it provides an opportunity for the parties to resolve conflicts before misunderstandings escalate into hostilities; and 2) it serves to make the parties aware when an arrangement is not going to work out so they can direct their time and resources elsewhere.
- Another important function of a written agreement is that it serves to remind the parties of specific portions of their agreement. People may honestly forget some of the details.

A few forage agreements do end in legal battles for one reason or another. In those cases, the rights and responsibilities of the parties depend upon whether or not their agreement is enforceable. At this late stage, many parties realize it is much cheaper to get the agreement properly written in the first place than to try and enforce an agreement they thought existed, but did not put in writing.

Determining pricing for pasture agreements

The purpose of both a lease or a contract is to develop an agreement that is financially attractive and equitable to all parties concerned. An agreement that is not considered fair and equitable by both parties will be short-lived.

As you develop a cost structure for a forage agreement, first consider the goals of the parties involved. Most agreements will look for a fair division of costs and income. However, special situations may occur, such as a farm transfer, where other goals override some of the cost and income considerations.

Second, remember that bargaining strategies and the quality of the product are also part of the arrangement. A contented livestock owner on a 60-percent share may give more return to the landowner than a disgruntled individual on a 50-percent share. Also, productive land or good management may return the other party more at a 50-percent share than unproductive land or poor management at a 60-percent share.

The *Farm Partnership/Lease Arrangements* spreadsheet by Gary Frank of the University of Wisconsin–Madison Agricultural Economics Department will help each party determine individual costs. Knowing each party's expenses and potential risk lays the groundwork for a fair and equitable agreement.

Pricing structures

There are three major pricing structures for pasture agreements: **per acre, per head per month**, and **per unit of gain**.

Per acre pricing varies with the productivity of the land and alternative uses or availability of pasture. This method is recommended for smaller land parcels and simple agreements. The agreement should establish the number, type of livestock, and length of use to prevent abuse of the pasture. A per-acre arrangement tends to return the least to the landowner, but the amount is assured and easily computed. The livestock owner receives the largest return, having assumed the risk of fluctuations in annual forage production. In 1994, the average pasture rental rate in Wisconsin was \$22.50 per acre.

Per head per month charges vary with the type of animal being grazed. With this pricing structure, the landowner takes some risk in forage production changes because the stocking rate will be reduced if forage production decreases drastically. But this arrangement gives the landowner more direct control over stocking rates and future pasture condition. It is important that both parties agree upon the type and size of animals to be grazed.

This method of pricing may especially suit the landowner for custom heifer growing where the goal is to limit the rate of gain to slightly less than two pounds per day. For the livestock owner, this system tends to encourage maximum average daily gain and lower stocking rates. From the landowner's perspective, per head per month charges tend to be kinder to the pasture.

A variation of this system that is most equitable to both parties is to calculate price based on animal unit month (AUM) where 1 AUM equals 1,000 lbs of animals for one month. Initial payments can be based on an estimated rate of gain

and adjustments to payments can be made after animals are weighed off-pasture where actual AUM equals the average of initial and final animal weights times the days on pasture.

If a 450-lb heifer required 1.5 acres for the summer and the pasture was worth \$22.50, then the per head cost would be \$33.75 ($\22.50×1.5) for the season. If the grazing season lasted 5 months, then the monthly per head rate on the heifer would be \$6.75 ($\$33.75 \div 5$). Note that more productive pastures would generate higher income.

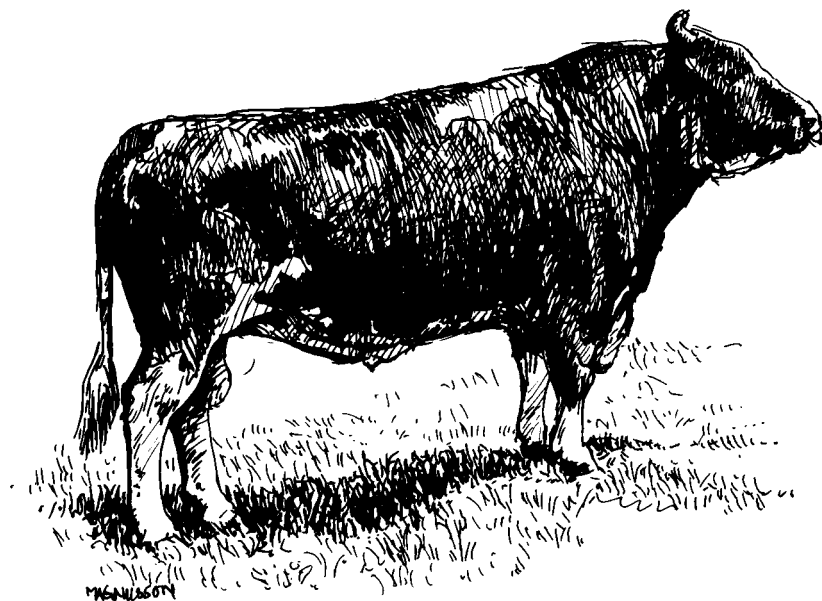
Per unit of gain applies to seasonally grazed, weight-gaining animals such as stocker cattle and lambs. These charges may consist of a pre-established charge per pound of gain (for example, \$0.35) or a share of the total weight gain (40% to 60%) for the grazing period. Animals are weighed before and after grazing with the difference being the weight gain. This method places a more precise economic value (in pounds of gain) on the pasture consumed and encourages both parties to provide ideal grazing. It spreads the risks associated with pasture production and animal gain between the livestock owner and the landowner and allows them to share equitably in the profit.

A 450-lb heifer bought at \$.90 per hundredweight (cwt) costs \$405. If it is sold later at 750 lbs for \$.75/cwt, it brings \$562.50. The heifer has gained 300 lbs. The value of the gain placed on the heifer is \$157.50 ($\$562.50 - \405) or \$.525 per pound. The livestock must produce that gain for less than \$.525 to show a profit.

Terms of the contract or lease

All of the important terms of the contract must be agreed upon by the parties. A court will not fill in important terms such as the quantity of forage sold or the price to be paid for the forage.

An example of a contract for the sale of standing forage with comments about its use begins on page 8. An example of a pasture lease with comments about its use begins on page 16.



CONTRACT FOR THE SALE OF STANDING FORAGE

The contract should identify the parties, the property on which the forage is growing, and the beginning and ending dates of the contract in enough detail so that there is no ambiguity.

SECTION I. CONTRACTING PARTIES, DESCRIPTION OF PROPERTY, AND EFFECTIVE DATE.

1. This contract is made this ____ day of ____ 19__, between:

_____, whose address is

_____ hereafter
called the SELLER and,

_____, whose address is

_____ hereafter
called the BUYER.

2. The Seller, in consideration of the agreements with the Buyer stated later in this contract, will sell to the Buyer, the standing forage on the following property:

a. Name of farm

b. Acres (more or less)

c. Located in

(county)

(state)

d. Legally described as _____

(township)

(section)

(range)

3. This contract shall become effective on the ____ day of _____, 19__,

and shall continue in force until the ____ day of _____, 19__.

SECTION II. PURCHASE PRICE AND TIME OF PAYMENT

1. The purchase price of this standing forage to be paid by the Buyer is as follows: (cross out the options that do not apply)

- a. \$_____ per acre for _____ acres = \$_____.
- b. \$_____ per head per month for _____ head for _____ months = \$_____.
- c. \$_____ per pound of gain.
 - i. Weight after grazing _____ (fill in at termination of contract)
 - ii. Weight before grazing _____ (fill in at beginning of contract)
 - iii. Total gain _____ (line i. minus line ii.)
 - iv. Times rate _____ (from line c. above)
 - v. Total payment _____ (line iii. times line iv.)

2. The purchase price will be paid as follows: (cross out the method that does not apply)

- a. _____% on or before _____ day of _____
- _____% on or before _____ day of _____
- _____% on or before _____ day of _____
- _____% on or before _____ day of _____

or b. in twelve equal installments due the _____ day of each month.

3. Overdue payments shall bear interest at the annual effective rate of _____%.

The contract should specify the amount that will be paid for the forage and when the payments will be made. If the seller wants to collect interest on late payments, the interest rate should be stated.

The three different methods of stating the purchase price are discussed on pages 6 and 7.

The timing of the payment affects not only each party's cash flow, but also the cost of enforcing the contract if one party fails to perform. If the full purchase price is paid before the forage is harvested, the buyer may need to resort to legal action if the seller does not abide by the contract. If the full purchase price is paid after the forage is harvested, the seller may take legal recourse to force the buyer to perform.

The seller's obligations to provide items such as water, fences, fertilizer and specific repairs and improvements should be clearly stated.

Unlike a lease, the buyer cannot assume that the seller is responsible for providing the land in good grazing condition for livestock.

The buyer may want to apply fertilizer to meet certain specifications. In that case, the fertilizer provision should be deleted from this section and the equivalent provision in Section IV should be used.

The seller may want to stipulate grazing conditions. The form contract provides some examples. Delete those that do not apply.

The seller may want to prohibit the buyer from assigning the contract without the seller's written permission.

Only one of the fertilizer provisions should be used in this section and in Section III.

SECTION III. THE SELLER AGREES AS FOLLOWS: (cross out items or parts of items that do not apply).

1. **Fences, and Water Supply.** To furnish fences, wells and other necessary facilities for grazing Buyer's livestock.
2. **Fertilizer.** To furnish all corrective fertilizer to bring the soil up to generally accepted desired fertility levels as outlined in a mutually agreed upon soil test procedure or as follows: ___ lbs. P₂O₅, ___ lbs. K₂O, ___ lbs. ____, ___ lbs. ____/____ lbs. ____.
3. **Repairs and Improvements.** To make the following repairs or improvements on the farm by the dates specified or as near as practicable thereto:

Repair or Improvement	To be Completed By:
_____	Date: _____
_____	Date: _____
_____	Date: _____

SECTION IV. THE BUYER AGREES AS FOLLOWS: (cross out items or parts of items that do not apply).

1. **Grazing.** To keep livestock out of the fields when the soil is soft and protect sod crops, especially new seedings from too close grazing that might impair the following year's crop. To refrain from grazing or taking a crop from legume seedings during the pre-winter recovery crucial period from September 1 until growth terminates.
2. **Assignment.** The Buyer shall not assign this contract to any person or persons for any purpose without written consent of the Seller.
3. **Fertilizer.** To furnish all corrective fertilizer to bring the soil up to generally accepted desired fertility levels as outlined in a mutually agreed upon soil test procedure or as follows: ___ lbs. P₂O₅, ___ lbs. K₂O, ___ lbs. ____, ___ lbs. ____/____ lbs. ____.

SECTION V. OTHER RIGHTS AND PRIVILEGES

1. The Buyer shall have the right to erect, maintain, and remove at the Buyer's expense, temporary fence and moveable buildings on the farm, provided that such fence or buildings or their removal do not damage the Seller's property in any way.
2. Buyer may remove the forage by grazing the property or by mechanically harvesting the forage at Buyer's option. The forage must be removed in a good husbandlike manner.
3. The crops grown or growing and/or livestock grazed or grazing on the property shall be security for the performance of the terms of this contract.
4. The Buyer shall provide the Seller with \$_____ as a security deposit. The security deposit shall be returned to the Buyer within ___ days after the termination of this contract providing the Sellers' property is left in satisfactory condition recognizing normal wear, depreciation, or unavoidable destructions. If the Seller retains any part of the security deposit, the Seller must give the Buyer a written statement of the damages for which the security deposit was retained. This written statement is due at the time the security deposit must be returned to the Buyer.
5. Any changes in this contract shall be in writing and signed by both parties. A copy shall be attached to this contract.

SECTION VI: ENFORCEMENT OF AGREEMENTS AND ARBITRATION

1. If the either party fails to perform as required by this contract, all costs and attorney fees of the non-breaching party in enforcing the contract shall become a part of the obligations the breaching party has to the Seller.
2. In the event the Seller and Buyer cannot reach an agreement on any matter connected with the contract or its application, the matter shall be referred to a committee of three arbitrators, one chosen by the Seller, one by the Buyer, and the third by the two thus chosen. None of said arbitrators shall be related to either party or have any interest, directly or indirectly, personally or otherwise, in the questions decided. The decision of this committee shall be in writing and shall be accepted as final by both Seller and Buyer. The cost of arbitration shall be borne equally by both parties.

Item 3 allows the seller to take possession of the crops and/or the livestock and sell them if necessary to collect the purchase price or other amounts due under the contract.

Item 5 allows that one or both parties may want to renegotiate the contract after it is signed. This provision makes it more cumbersome to amend the contract, but it eliminates any confusion about the changes to which the parties have agreed. The Statute of Frauds requires the changes to be in writing for contracts of more than \$500.

The U.S. legal system does not require the losing party in a court battle to compensate the winner for legal fees. Therefore, the winning party may incur substantial expense attempting to enforce a contract as written. To avoid that situation, the parties can include a term in the contract requiring the losing party in a dispute to pay reasonable attorney fees of the winning party. This clause prevents one party from threatening to sue on a weak claim with the intention of getting the other party to settle for an amount less than the attorney fees required to defend the weak claim.

Item 2 can reduce the cost of fighting over a disagreement by establishing an arbitration procedure that averts the need to go to court.

The contract should have a provision that states the contract is terminated if either party fails to perform. This allows the non-breaching party to avoid obligations under the contract without being in breach of the contract.

Item 2 suggests provisions that can be added to allow the non-breaching party to perform the other's obligations under the contract to protect the land, crops, livestock, or other assets from damage.

All parties to the contract should sign it. To protect the buyer in the event that the seller sells the farm before the end of the contract, all owners of the land should sign as sellers of the forage. The signatures should be notarized so that the contract can be recorded at the County Register of Deeds Office. Recording the contract protects the buyer because a potential buyer of the land is put on notice that the buyer of the forage has the right to the forage.

SECTION VII. OTHER AGREEMENTS

SECTION VIII. TERMINATION OF AGREEMENT.

1. Failure on the part of either party to perform any of the terms, covenants, or conditions covered by this agreement, shall constitute grounds for termination thereof, at the option of the other party.
2. Failure on the part of the either party to perform any of the terms, covenants, or conditions covered by this agreement, shall give the non-breaching party the right to perform, or have performed, any of the terms, covenants, or conditions remaining undone by breaching party and to sell or retain sufficient of the breaching party's assets to cover all costs incurred in fulfilling the contract. In case of dispute, the decisions as to the violation of the agreement shall rest with the committee of arbitration herein provided for.

SECTION IX. SIGNATURES

(Type or print Seller's name)

(Date)

(Type or print Buyer's name)

(Date)

County of _____)

State of _____)

) SS:

On this ___ day of _____ 19___, before me, the undersigned, a Notary Public in said state, personally appeared _____, _____, _____, and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

(Notary Public)

Section **. RIGHTS OF SUCCESSORS

* The terms and conditions of this contract shall be binding on the heirs, personal representatives, successors and assigns of both Seller and Buyer in the same manner as upon the original parties, except as provided by mutual written agreement.

* If the Seller transfers the property, the new owner(s) will be subject to the provisions of this contract except as provided by mutual written agreement.

Section **. LAND USE AND CROPPING PROGRAM

* Approximately ____ acres of the farm can be used on a rotational cropping basis with ____ acres in permanent pasture, ____ acres in woods not to be grazed. The tracts that are to be included in these respective classes shall be designated in writing by the Seller at the beginning of the contract and be shown in Clause 2 below and/or on a field map of the property.

* The combined annual acreage of cultivated crops shall not exceed ____ acres. Each field and the crop rotation to be followed are listed below:

a.

Field	Acres	Crops to be Grown on Rotation to be Followed
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. The pasture stocking rate shall not exceed ____ animal units per acre. An animal unit equals 1,000 lbs of live weight.

* During each year that this contract is effective, sufficient legume or legume/ grass forage shall be seeded or maintained to provide for approximately ____ acres. The seed required for such crop shall be furnished by Seller/Buyer (cross one out). If any legume, or legume/ grass seeding fails, the substitute crop or crops shall be mutually agreed upon.

* No permanent pasture shall be plowed without the written consent of the Seller.

Other terms may be needed in some contracts and should be inserted before the signatures (Section IX.).

If the buyer is concerned about preserving rights to the forage in the event the land is sold, or the seller dies, the contract could include a clause that specifically preserves the buyer's right to the forage.

If the buyer and seller agree that the buyer will play a role in producing the crop, they may want a clause in the contract that sets out any agreements on cropping patterns.

In lieu of Clause *a, the fields and cropping programs could be noted on either a detailed farm field map or on the soil conservation plan.

If the seller plans to carry out soil conservation work during the term of the contract, those plans could be included in the contract so that the buyer is not surprised by the activity and the buyer's right to the benefit of the conservation practices is established. The seller may want to bind the buyer to follow an established conservation plan.

Section **. SOIL CONSERVATION

* Soil Conservation: The Seller agrees to build or establish the following conservation or other land improvements on these fields as follows (contingent on the availability of technical and construction services as well as weather). (Examples: Terraces, toewalls, dams, etc.)

Fields	Date(s) of Establishment	Land Improvement or Conservation Item
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* Soil Conservation: The Buyer agrees to follow the Soil Conservation Plan for the farm. Land subject to serious erosion is not to be fall plowed nor used for growing annually seeded crops unless grown infrequently in a long forage based crop rotation or by use of high surface residue conservation tillage methods. The numbers or descriptions of such fields are as follows:

* Establishment of Conservation Practices: The Buyer agrees to establish the following conservation practices on these fields as follows (contingent on the availability of technical services as well as weather conditions). (Examples: Conservation tillage, contours, etc.)

Field(s)	Date of Establishment	Conservation Practice
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* Maintenance of Conservation Practices: The Buyer agrees to maintain established grass waterways, water courses, terraces, contour strips, tile drains, tile outlets and all other soil and water conservation practices and to refrain from any operation or acts that will injure them. To furnish all labor and materials for minor repair of these practices if damaged by natural events or farming activities.

Section **. MANURE HANDLING

* Manure Handling: The Seller agrees to keep the manure hauled out and spread at appropriate times and in conformity with current waste management regulations and technology. Manure is not to be removed from the farm.

If the seller plans to spread manure on the pasture during the term of the contract, a clause could be included to set out the rights and responsibilities of each party.

Section **. WEED CONTROL

* Weed Control:

a. Buyer agrees to cut, spray or otherwise control noxious weeds before they go to seed. Noxious weeds are defined by Wisconsin Statutes §66.96(2) or are listed:

The parties may want to state their obligations for weed control. This is particularly important if the buyer is given this obligation.

b. Any special weed control measures are to be paid for in the following manner:

Section **. REIMBURSEMENT FOR UNEXHAUSTED APPLICATIONS OF FERTILIZER

1. At the termination of this contract, the Seller agrees to compensate the Buyer for: (CHECK ONE)

None ___ 1/3 ___ 1/2 ___ 2/3 ___ Other (specify) ___ of the Buyer's cost of commercial fertilizer above the maintenance amount applied the last year of the contract, except for nitrogen applied alone or fertilizer applied in the row for cultivated crops.

To ensure proper fertilization, the buyer may agree to apply fertilizer during the term of the contract. In that case, the buyer may want to include a provision that allows him or her to recover the cost of unexhausted fertilizer at the termination of the contract.

2. Other: _____

_____.

PASTURE LEASE

The lease should identify the parties, the property that is being leased and the beginning and ending dates of the lease in sufficient detail so that there is no ambiguity about these items.

Under Wisconsin law, if the renter continues to pay rent and occupy the pasture after the end of the lease with the landowner's consent, a year-to-year lease has been created that can be terminated only by one party giving notice at least 90 days before the end of a term.

SECTION I. CONTRACTING PARTIES, DESCRIPTION OF PROPERTY, AND EFFECTIVE DATE.

1. This lease is made this ____ day of ____ 19__, between:

_____, whose address is

_____ hereafter

called the Landowner and,

_____, whose address is

_____ hereafter

called the Renter.

2. The Landowner, in consideration of the agreements with the Renter stated later in this lease, will lease to the Renter, to occupy and use for pasture purposes, the following property:

a. Name of farm

b. Acres (more or less)

c. Located in

(county)

(state)

d. Legally described as _____

(township)

(section)

(range)

3. This lease shall become effective on the ____ day of _____, 19__, and

shall continue in force until the ____ day of _____, 19__.

SECTION II. RENTAL RATE AND PAYMENT SCHEDULE

1. The annual cash rent to be paid by the Renter is as follows: (cross out the options that do not apply)
- a. \$_____ per acre for _____ acres = \$_____.
 - b. \$_____ per head per month for _____ head for _____ months = \$_____.
 - c. \$_____ per pound of gain.
 - i. Weight after grazing _____ (fill in at termination of contract)
 - ii. Weight before grazing _____ (fill in at beginning of contract)
 - iii. Total gain _____ (line i. minus line ii.)
 - iv. Times rate _____ (from line c. above)
 - v. Total payment _____ (line iii. times line iv.)
2. The rent will be paid as follows: (cross out the method that does not apply)
- a. _____% on or before _____ day of _____
 _____% on or before _____ day of _____
 _____% on or before _____ day of _____
 _____% on or before _____ day of _____
 - or b. in twelve equal installments due the _____ day of each month.
3. Overdue payments shall bear interest at the annual effective rate of _____%.

The lease should specify the amount of rent that will be paid and when the payments will be made. If the landowner wants to collect interest on late payments, the interest rate should be stated.

The timing of the payment of the rent affects not only the cash flow of both parties but also the cost of enforcing the lease if one party fails to perform. If the full rental payment is paid at the beginning of the lease, the renter may need to resort to legal action in the event the landowner does not perform as required by the lease. If the full rental payment is paid after the forage is harvested, the landowner may have to resort to legal action to force the renter to perform.

The landowner's obligations to provide items such as water, fences, fertilizer and specific repairs and improvement should be clearly stated in the lease.

The renter may want to apply fertilizer to meet his or her specifications. In that case, the fertilizer provision should be deleted from this section and the equivalent provision in Section IV should be used.

The landowner may want to stipulate grazing conditions. The form lease provides some examples. Those that do not apply should be deleted.

The landowner may want to prohibit the renter from assigning the lease without the landowner's written permission.

Only one of the fertilizer provisions should be used in this section and in Section III.

SECTION III. THE LANDOWNER AGREES AS FOLLOWS: (Strike out items or parts of items not desired).

1. **Fences, and Water Supply.** To furnish fences, wells and other necessary facilities for grazing Renter's livestock.
2. **Fertilizer.** To furnish all corrective fertilizer to bring the soil up to generally accepted desired fertility levels as outlined in a mutually agreed upon soil test procedure or as follows: ____ lbs. P₂O₅, ____ lbs. K₂O, ____ lbs. _____, ____ lbs. _____/____ lbs. _____.
3. **Repairs and Improvements.** To make the following repairs or improvements on the farm by the dates specified or as near as practicable thereto:

Repair or Improvement	To be Completed By:
_____	Date: _____
_____	Date: _____
_____	Date: _____

SECTION IV. THE RENTER AGREES AS FOLLOWS: (Cross out the options that do not apply).

1. **Grazing.** To keep livestock out of the fields when the soil is soft and protect sod crops, especially new seedings from too close grazing that might impair the following year's crop. To refrain from grazing or taking a crop from legume seedings during the pre-winter recovery crucial period from September 1 until growth terminates.
2. **Assignment.** The Renter shall not assign this lease to any person or persons for any purpose without written consent of the Landowner.
3. **Fertilizer.** To furnish all corrective fertilizer to bring the soil up to generally accepted desired fertility levels as outlined in a mutually agreed upon soil test procedure or as follows: ____ lbs. P₂O₅, ____ lbs. K₂O, ____ lbs. _____, ____ lbs. _____/____ lbs. _____.

SECTION V. OTHER RIGHTS AND PRIVILEGES

1. The Renter shall have the right to erect, maintain, and remove at the Renter's expense, temporary fence and moveable buildings on the farm, provided that such fence or buildings or their removal do not damage the Landowner's property in any way.
2. The crops grown or growing and/or livestock grazed or grazing on the property shall be security for the rent and for the performance of the terms of this lease.
3. The Renter shall provide the Landowner with \$_____ as a security deposit. The security deposit shall be returned to the Renter within ___ days after the termination of this lease providing the Landowners' property is left in satisfactory condition recognizing normal wear, depreciation, or unavoidable destructions. If the Landowner retains any part of the security deposit, the Landowner must give the Renter a written statement of the damages for which the security deposit was retained. This written statement is due at the time the security deposit must be returned to the Renter.
4. Any changes in this lease shall be in writing and signed by both parties. A copy shall be attached to this lease.

SECTION VI: ENFORCEMENT OF AGREEMENTS AND ARBITRATION

1. If the either party fails to perform as required by this lease, all costs and attorney fees of the non-breaching party in enforcing the lease shall become a part of the obligations the breaching party has to the Landowner.
2. In the event the Landowner and Renter cannot reach an agreement on any matter connected with the lease or its application, the matter shall be referred to a committee of three arbitrators, one chosen by the Landowner, one by the Renter, and the third by the two thus chosen. None of said arbitrators shall be related to either party or have any interest, directly or indirectly, personally or otherwise, in the questions decided. The decision of this committee shall be in writing and shall be accepted as final by both Landowner and Renter. The cost of arbitration shall be borne equally by both parties.

Item 3 allows the landowner to take possession of the crops and/or the livestock and sell them, if necessary, to collect the rent or other amounts due under the lease.

Item 5 allows that one or both parties may want to renegotiate the lease after it is signed. This provision makes it more cumbersome to amend the lease, but eliminates any confusion about the changes to which the parties agreed. If the lease's duration is for more than a year, the Statute of Frauds requires the changes to be in writing even if the lease does not have this provision.

The U.S. legal system does not require the party who loses a court battle to compensate the winner for lawyer fees. Therefore, a party to the lease could incur significant legal expense attempting to enforce the lease as written. To avoid that situation, the parties can put a term in the lease requiring the losing party in a dispute to pay reasonable attorney fees of the winning party. This clause prevents one party from threatening to sue on a weak claim with the intent of getting the other party to settle for an amount less than the attorney fees required to defend the weak claim.

Item 2 can reduce the cost of fighting over a disagreement by establishing an arbitration procedure that averts the need to go to court.

The lease should have a provision that states the lease is terminated if either party fails to perform. This allows the non-breaching party to avoid obligations under the lease without being in breach of the lease.

Item 2 suggests provisions that can be included to allow the non-breaching party to perform the other party's obligations under the lease to protect the land, crops, livestock or other assets from damage.

All parties to the lease should sign it. To protect the renter in the event the landowner sells the farm before the end of the lease, all owners of the land should sign as owners of the forage. The signatures should be notarized so that the lease can be recorded at the county Register of Deeds office. Recording the lease protects the renter because a potential buyer of the land is put on notice that the renter of the forage land has the right to the forage.

SECTION VII. OTHER AGREEMENTS

SECTION VIII. TERMINATION OF AGREEMENT.

1. Failure on the part of either party to perform any of the terms, covenants, or conditions covered by this agreement, shall constitute grounds for termination thereof, at the option of the other party.
2. Failure on the part of the either party to perform any of the terms, covenants, or conditions covered by this agreement, shall give the non-breaching party the right to perform, or have performed, any of the terms, covenants, or conditions remaining undone by breaching party and to sell or retain sufficient of the breaching party's assets to cover all costs incurred in fulfilling the lease. In case of dispute, the decisions as to the violation of the agreement shall rest with the committee of arbitration herein provided for.

SECTION IX. SIGNATURES

_____ (Date)

(Type name or print Landowner's name)

_____ (Date)

(Type name or print Renter's name)

County of _____)

) SS:

State of _____)

On this ___ day of _____ 19__, before me, the undersigned, a Notary Public in said state, personally appeared _____, _____, and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

(Notary Public)

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Leasing pasture or buying standing forage

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