



# Texas Hunting Lease Checklist

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Leasing property for hunting is big business in Texas. Often, landowners can generate additional income by leasing their property to a hunter during hunting season. Also, hunting can help prevent crop damage and livestock diseases by managing wildlife in the area.

As with all lease agreements, a hunting lease should be in writing to ensure that the parties' rights are protected. The following checklist contains many of the most common terms found in hunting leases. It is certainly not exhaustive, and not all of these terms may be necessary in every lease. Written from the landowner's point of view, this list may also be useful to a lessee in the negotiation process.

**This list is not a substitute for legal advice.** All parties—landowners and lessees—should consult with their own attorneys when entering into a hunting lease to make sure hunting leases are legally binding and protect their interests.

## Names of the parties:

Include the names and addresses of the parties, both the landowner and the lessee. If the lessee intends to allow others to hunt on the property with him or her, require each additional person to sign the lease so they will be bound by its terms.

## Duration of the lease:

Specify the length of the lease. Leases may range from a matter of days to several years. Certain leases may be required to be in writing in order to be enforceable. For example, under the Statute of Frauds, Texas requires a lease of real property lasting for more than 1 year to be in writing. Another consideration is whether the lease will automatically renew for the next year and what type of notice may be required by either party to terminate the lease.

## Description of the land:

Describe the land so that both parties (and a judge or jury if there were to be a dispute over the lease) can understand exactly where the lessee has permission to hunt. Use legal metes-and-bounds descriptions, a photograph or diagram showing the specific location, or simply use words if an exact description can be conveyed.



### **Price:**

Specify the lease price. The price for a hunting lease varies based on factors such as the duration of the lease, the species of animals to be hunted, the hunting method allowed, and the number of acres available. Most hunting leases require payment per animal, per acre, per year, per person, or any combination of these factors. If using an installment payment scheme (such as monthly payments), the landowner may want to impose a penalty for late payments.

### **Payment method:**

Determine the payment method. Payments may be made in any manner agreed upon by the parties. Frequently, payments are set up either as one lump sum prior to the hunting season or as a partial payment up front and the remainder due on the first day of the lease.

### **Security deposit:**

Require a security deposit to cover any damage caused to the property, improvements, fences, crops, or livestock while the lessee is on the property.

### **Access to the land:**

State how the lessee is to access the property, designating any entrance points, gates, and roads the lessee is permitted to use.

### **Use of vehicles or ATVs:**

State whether the lessee is permitted to use vehicles or ATVs on the property and if there are any areas where such vehicles are prohibited.

### **Requirement that gates be kept closed:**

Stipulate that all gates be kept closed at all times, particularly if there are livestock on the property. Also include a requirement that the lessee is liable for the death or injury of any livestock or damages to a third party caused by any livestock that escape due to a gate being left open by the lessee.

### **Use of facilities on the property:**

Discuss the right of the lessee to use any facilities on the property including barns or sheds, bunkhouses, camping areas, deer blinds, and tree stands.

### **Hunting methods permitted:**

Specify the type of hunting method allowed. This includes both the type of weapon that may be used (bow, rifle, shotgun, etc.) as well as other considerations, such as whether the lessee may use dogs during the hunt.

### **Any requirements or limitations on hunting:**

State any limitations or requirements imposed on the lessee (such as each hunter may kill only one trophy buck or each hunter must kill one doe before killing a buck).

### **Cleaning and disposing of animals:**

Specify a limited area where any animal may be cleaned on the property and state the requirements for carcass disposal.

### **Information provided to the landowner after a kill:**

Ask that the lessee provide certain information about the animals killed. This could include photographs and measurements to be used for advertising purposes.

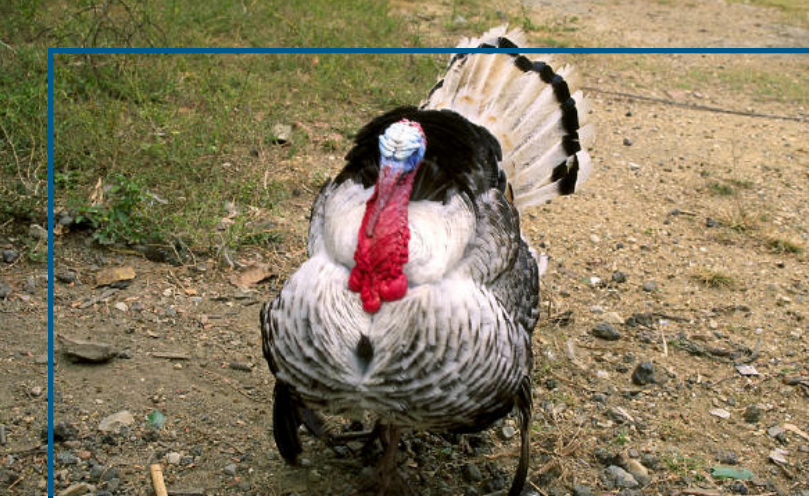
### **Number of hunters permitted on the property:**

Specify the maximum number of hunters allowed on the property at any one time and/or a total number of hunters allowed during the lease. This provision serves to ensure the safety of the hunters on the land, and the number permitted will depend on the size and geography of the property.

### **Guests of lessee:**

Address whether the lessee is permitted to bring guests onto the property. Require that any guest be approved in writing by the landowner and that they sign a liability release and indemnification agreement (discussed below). If any minors are to be present with the lessee, the lease should require the minors to be under direct adult supervision at all times, provide that the adult supervisors will be fully responsible for the safety of the children, state that the adult supervisors will be liable for any injury, and indemnify the landowner.





### □ **Right to erect improvements on the property:**

Address whether the lessee has the right to erect any improvements on the property including deer blinds, feeders, or tree stands. Some leases require the lessee to obtain written permission from the landowner before taking any such action. Further, specify whether the lessee has the right to remove the improvements at the end of the lease and set a deadline for such removal.

### □ **Requirement that the lessee abide by all federal and state laws:**

Require the lessee and any other hunters to have a valid hunting license covering the species identified in the lease. Also require compliance with all other state and federal hunting laws such that if the lessee were to break the law, he or she would also breach the contract.

### □ **Safety practices:**

Outline safe hunting practices such as maintaining safe gun practices; not shooting in the direction of people, livestock, or buildings; not shooting across property lines; not using alcohol or drugs; and preventing fires on the property.

### □ **Damages to the property:**

Prohibit damage to the property and require the lessee to repair or pay for any damage caused, including death or injury to livestock; the destruction of crops; harm to fences, gates, or improvements; and trash or other debris left on the premises.

### □ **Landowner's right of inspection:**

Consider reserving the right to enter the property for various reasons during the lease, including to care for crops or livestock and to inspect the premises. Discuss this issue with an attorney to determine if the right to inspection might be outweighed by liability concerns that such a right might impose.

### □ **Landowner's right to hunt on the property:**

Specify whether the landowner and his or her family have permission to hunt on the property during the term of the lease, or if the lease grants exclusive hunting rights to the lessee only.

### □ **Other surface uses:**

Identify all surface users of the property during the lease term. Examples include oil and gas companies that have a mineral estate lease, farmers or ranchers who may have leased the property for raising crops and livestock, and the landowner himself. Make the lessee aware of these uses and require that the lessee will act in good faith to accommodate and cooperate with these other surface owners. Additionally, under Texas law, because the mineral estate is dominant over the surface estate, the mineral lessee has the right to use as much of the surface estate as is reasonably necessary to produce minerals. A lessee should be aware this could potentially interfere with his or her hunting ability and the lease should address what will happen in the event that this type of interference occurs.

### □ **Transferability:**

Address the rights of the parties as to assignment or sublease. Under Texas law, a lessee may not assign or sublease without written permission of the landowner. It is still advisable to include this provision in the lease. Also consider provisions in the lease to address what will happen if the property is sold or ownership is otherwise transferred during the lease term.

### □ **No warranty of success:**

Include a lease provision that states that the landowner is not making any promise or warranty that the lessee will be successful in killing any animal during the lease term.

### □ **Effect of breach:**

Consider a clause stating that the violation of any term, covenant, or condition of the lease agreement by the lessee allows for the landowner, at his option, to terminate the lease upon notice to the lessee. This provision allows the landowner the option of terminating the lease if any term is violated, rather than merely having the right to sue the lessee for damages. If included, this clause should address the type of notice required to the lessee and whether any refund of payment or security deposit will be available.

### □ Lessee insurance:

Require the lessee to obtain liability insurance before hunting on the property, maintain it throughout the lease term, and include the landowner as an “additional insured.” This should offer insurance coverage to the landowner under the lessee’s policy in the event of a claim made by a third party against the lessee and landowner. Also require a specific minimum level of coverage.

### □ Release of liability and indemnification:

Require the lessee to agree to a release of liability. If there are to be guests with the lessee, a similar document should be signed by each of them. To be valid, the release of liability must be expressed in unambiguous terms and must be conspicuous, meaning it would be noticed by a reasonable person. To be adequately specific, a release of liability should outline the potential dangerous conditions on the land, state that the lessee understands the potential dangers associated with entering the property, and that the lessee voluntarily and knowingly releases liability of the landowner for any dangerous conditions, negligent acts, or gross negligence. According to the express negligence doctrine in Texas, it is critical that the release state specifically the claims to be released and use the words “negligence” and “gross negligence.” To meet the conspicuousness requirement, the release should be a separate document written in large and/or bold font. In addition to the liability release, provide a clause that the lessee will indemnify and hold the landowner harmless from any claim, demand, loss, damage, attorney’s fees, and cost resulting from any such claim. This is a critical issue and should be discussed in detail with an attorney to ensure the provision complies with Texas law.

### □ Choice-of-law:

Use a choice-of-law provision to allow the parties to determine which state’s law will govern the lease in the event of a dispute. In Texas, courts enforce these provi-

sions so long as they are not against public policy and are reasonably related to the agreement. Because many laws vary by state and a choice-of-law provision could significantly impact rights under a lease, consult an attorney with regard to this provision to determine which options are the most advantageous to the landowner.

### □ Forum clause:

Include a forum clause (provides that a dispute over a lease will be heard in a particular location or court) that requires that any suit be filed in the county where the land is located or the landowner lives, particularly if the lessee lives some distance away.

### □ Dispute resolution:

Consider including a dispute resolution clause. The purpose of this type of clause is to limit the time and expenses of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third party arbitrator (usually an attorney) hears evidence and renders a decision. If the arbitration is “binding,” that judgment is final on the parties, absent evidence of serious wrongdoing by the arbitrator. Mediation involves a neutral third party who will work with the landowner and lessee to attempt to reach a mutually acceptable resolution. If both parties refuse to agree to settle, the case then proceeds to court. It is important to understand the difference between these options and to consult with an attorney to determine which option is best. A dispute resolution clause should identify how the arbitrator or mediator is selected.

### □ Liquidated damages:

Consider the need for any liquidated damages, which are contractually agreed upon damage amounts. These damages are often used in situations where calculating actual damages might be difficult. Instead, the parties agree up front to a set amount of damages for certain actions.

### □ Attorney’s fees:

Consider including a provision providing that if the landowner is successful in a dispute (whether in arbitration or in court) with the lessee, the lessee will be responsible for the landowner’s reasonable costs and attorney’s fees. Generally, a successful litigant is not entitled to recover his or her attorney’s fees from the other party without a contractual agreement or a statute. The lessee will likely request a reciprocal clause requiring payment of his or her attorney’s fees if the lessee is successful.



## □ Confidentiality clause:

Use a confidentiality clause if there is any information the landowner does not want to be made public. For example, a landowner may not want the fee charged to one party disclosed if he or she intends to charge an increased fee to another party or in the future.

## □ Statutory provisions:

In addition to drafting a thorough lease, be aware of any recreational land use or agritourism statutes that might affect the landowner's rights and liability. In Texas, the Recreational Use Statute limits the liability of landowners to hunters on agricultural land (see the Texas Civil Practice and Remedies Code, Chapter 75, [www.statutes.legis.state.tx.us/Docs/CP/htm/CP.75.htm](http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.75.htm)). It limits the landowner's liability for injuries occurring on agricultural land during recreational activities by imposing a lesser duty upon the landowner if certain criteria are met, such as charging no fee, charging fees less than 20 times the ad valorem tax rate for the last calendar year, or maintaining a required level of insurance coverage. Further, if a landowner maintains the insurance coverage discussed in the statute, his or her liability is capped at that level if sued.

If these requirements are met, the landowner is not liable for injury to persons engaged in recreational activities caused by a condition on the land unless the owner was grossly negligent or acted with malicious intent or bad faith. Discuss this important legal protection available to landowners with an insurance agent and attorney.

## □ Sample leases:

There are many sample lease forms available online that may be useful in preparing an initial draft of a hunting lease. Here are links to a few examples:

- [https://www.michfb.com/MI/uploadedFiles/Documents/Farm\\_Business\\_Resources/Hunting20Lease20Agreement.pdf](https://www.michfb.com/MI/uploadedFiles/Documents/Farm_Business_Resources/Hunting20Lease20Agreement.pdf)
- <http://msucares.com/pubs/publications/p2310.pdf>
- <http://www.reynwoodforest.com/docs/SampleHuntingLease.pdf>
- <http://www.agmanager.info/farmmgmt/land/lease/hunting/example%20leases.pdf>
- <http://osufacts.okstate.edu/docushare/dsweb/Get/Document-2708/NREM-5032web-survey.pdf>

## □ Money-saving tip:

Although it may be expensive, hire attorneys to review and approve all leases before they are executed between the landowner and lessee. Because most attorneys bill by the hour, a client can save considerable fees by doing as much legwork as possible before going to the attorney's office. For example, a landowner could have already collected necessary documents such as the legal description or sketch of the property to be leased, saving the landowner from being billed time for the attorney to do this task. Moreover, a landowner could prepare a first draft of the lease using this checklist and the sample leases referenced above. This would save the attorney the effort of starting from scratch and allow him or her to simply edit the draft prepared by the landowner.

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