

# TEXAS HUNTING LEASE AGREEMENTS AND LANDOWNER LIABILITY TO QUAIL HUNTERS

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**Abstract:** Hunting is big business in Texas. With 97 percent of the land privately owned, Texas landowners possess a unique opportunity to derive revenue from hunters wishing to pursue game such as quail. Before entry is allowed, the landowner and hunters need to formalize some type of agreement so the expectations of both parties are met. At the same time, the landowners need insulate themselves, to the greatest degree possible, from liability in the event a hunter is injured while on the property. In this regard, Texas legislators have rescued landowners from potential liability if certain conditions are met.

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## Introduction

Texas landowners occupy a unique position. Unlike many other states, Texas has little federally or state-owned land available for public hunting. Thus, private landowners control the major supply of huntable land. This position affords Texas landowners a unique source of income unaffected by cycles in agricultural and petroleum prices.

*Location* of the game animals and not the *ownership* generates the revenue. In Texas, indigenous wild animals such as quail and white-tailed deer belong to the state. As such, the state regulates the taking of game through hunting laws.

Although the state regulates when, how and the number of game that may be taken, the state cannot authorize trespassing on privately owned land. Independent permission from the landowners must be secured. Granting the right to enter and hunt generates income.

Historically, permission to hunt was granted for the asking. Recently, however, Texas landowners began exacting a price for this privilege in the form of an agreement commonly referred to as a *hunting lease*. Depending upon the size of the lease tract, the abundance of game and the amenities available to the hunter, prices range from a few dollars per day to thousands of dollars per season. The lease may last a few hours, a few days, several weeks or the duration of the hunting season.

The so-called Texas hunting lease is not, in fact, a lease but rather a *license*. Technically, a lease is a

contract that conveys exclusive possession or control of land to another for a specified period. A license, on the other hand, grants permission to do something that otherwise would not be allowed or would be illegal. Because the typical Texas hunting lease does not grant the hunter exclusive possession or control of the land, it is better characterized as a license. However, in this publication, the term *lease* is used.

The hunting lease takes numerous forms. It may be granted orally on the payment of a specified amount of money. Or, it may be given by way of an elaborate written document covering all aspects of the hunt, including how the landowner's property may be used.

Whether the lease is oral or written, the landowner and hunter should concur on key issues before consenting to the agreement. By doing so, each party knows what to expect and thereby avoids possible misunderstandings. The terms of the agreement may affect the lease price.

## Duration of the Lease Term

The agreement should specify the beginning and end of the lease term. If the hunter has the privilege to scout the premises, set up feeders, erect blinds or conduct other similar projects before the season, this should be stated.

## Description of the Lease Tract

The exact area on which the hunting privilege is granted, to the exclusion of all others, should be described. If a legal or metes-and-bounds description is not available, a sketch or plat is the next best thing.

The lease should prohibit the hunter from entering other property except to access the hunting premises.

## **Access to Lease Tract**

If the land does not have a public access, the specific route or routes for the hunter's ingress and egress should be designated. When there is more than one public access, the landowner may wish to restrict the hunter's use to only one or two.

## **Game to Hunt**

Generally, the primary game animal is white-tailed deer. Other game may be present such as quail, turkeys, pigs, exotics and varmints. The agreement should state what game may be taken and when. Some leases may deny quail hunting until the deer season closes. Others allow quail hunting during the week but not on weekends during deer season. Other limitations may apply. The price of the hunting lease may rise with the permission to hunt more game.

## **Hunting Weapons**

The parties need to agree on types of weapons that may be used. The list may include all legal weapons or may be limited to centerfire rifles, muzzleloaders, shotguns or bows, depending on the game hunted.

## **Hunting Method**

The hunting method, in part, is related to the types of weapons that may be used. The agreement may limit shooting to blinds only, may restrict shooting from a vehicle or may allow stalkig only during bow season. Some leases may allow certain types of hunts only when a guide or designated individual accompanies the hunter.

Dogs may be prohibited or limited to pursuing quail and doves or trailing wounded deer.

It is against the law to hunt deer at night. However, it is legal to hunt some other game such as raccoons. The lease should state whether night hunting is permitted. It may be prohibited during deer season.

## **Number of Hunters and Guests**

The number of hunters who participate in a particular lease or hunt needs to be specified. Generally, the landowner will specify the maximum

number or enter individual agreements with each hunter or group of hunters. On guided quail hunts, the landowner may limit the number of hunters behind a brace of dogs.

The lease needs to state whether guests of hunters will be allowed and when. If hunting guests are allowed, the quantity of game the guests may take must be determined. For instance, if the game limit on deer is four per hunter per season Bi.e., two bucks and two does, can a guest hunter harvest a deer in addition to the four allowed the lease hunter who invited the guest?

Also, if guests are permitted, must the host hunter accompany (or be on the premises with) the guests? Children below a certain age may not be permitted to hunt, or the landowner may require that they be physically accompanied by an adult at all times. Landowners assume additional risks and liability for children on the premises. (See pages 5 and 6 for more details.) Are hunters responsible and liable for the acts of their guests?

Finally, the maximum number of both hunters and guests present on the leased premises at one time should be stipulated.

## **Lease Price**

The price of the lease per year, per day(s), per hunter or per animal needs to be set. The price may vary according to the lease terms. For instance, the lease price may rise as the duration of the lease, the number and variety of game animals allowed, the lease tract size, the types of weapons and permitted hunting methods increase.

Some deer leases are priced by the sex and quality of the deer. For example, there may be one price for each doe, while the price for bucks varies with antler quality.

## **Payment Schedule**

The lease may be paid either in lump sum when privileges begin, periodically throughout the year or at the beginning of each hunt. Generally, the landowner will require partial payment before the hunting season to ensure that the hunter will honor the contract on opening day. The agreement should address the consequences of missing an installment payment. Are all prior payments forfeited or may the landowner

pursue the hunter in court for the balance? If payment is required at the beginning of a hunt, are checks accepted?

Effective September 1, 1997, landlords have a duty to mitigate rent if the tenants breach the residential lease by leaving early. The Texas courts may apply this rule to hunting leases.

### **Use of Facilities**

The lease price should reflect the quantity and quality of hunting facilities available to the hunter. Any hunting facilities on the lease usually are at the disposal of the hunter, but this should be clarified before hunting begins. The manner in which the facilities are maintained should be specified. For instance, which party has the duty to clean the premises, repair broken appliances, windows, plumbing, to maintain the roads and dog pens?

If the lease does not have overnight accommodations, or if they are not available to the hunter, the parties need to decide if overnight camping will be permitted and where. Fires may be restricted and cleanup required.

### **Clearing Senderos and Improving Premises**

The lease may permit hunters to maintain and improve the premises by clearing and maintaining senderos (cleared lanes for shooting), improving the roads and crossings, bringing in electricity, digging water wells, erecting a camphouse, clearing and/or disking land to create quail habitat and so forth. The expenses may be borne solely by the hunter, solely by the landowner or shared, depending on the agreement.

If the hunter is entirely or partially liable for the expenses, the lease agreement should prohibit the attachment of any liens on the property by virtue of the improvements.

### **Vehicular Travel**

On certain parts of the lease, vehicular travel may be restricted. Landowners may prefer that the hunter use only existing roads. The use of off-road or four-wheel drive vehicles, except on existing roads, may be prohibited. Others may allow off-road travel but not across improved pastures, cropland, wet ground or other inappropriate areas. Depending on the terrain, speed limits may be imposed.

### **Blinds and Game Feeders**

Most Texas deer are taken from blinds. The blinds may be provided by the landowner or erected by the hunter. Permission to use pre-existing blinds should be discussed as well as the hunter's installation of new ones.

In particular, an agreement should stipulate the:

- landowner's liability, if any, for injuries incurred by hunters using the blinds;

- necessity of obtaining the landowner's permission for both the construction and location of blinds and game feeders installed by the hunter and the construction of any senderos incidental thereto;

- fate of blinds and feeders installed by the hunter but not removed within a designated period after the lease terminates; and

- duty of the landowner, if any, to fill and maintain feeders both before and during the hunting season.

**NOTE:** To lure game off adjacent property, some hunters erect feeders on fence lines and harvest crossing game. Although the practice is legal, it may create hard feelings. For this reason, landowners may require prior permission for locating and installing game feeders and blinds near boundary fences.

Also, to ensure the presence of game and a fairer hunt, the landowner may prohibit hunting within a certain distance from watering holes and feeders. Alternatively, the landowner may restrict hunting around certain feeders maintained exclusively by the landowner for viewing game.

Regardless of the location of blinds, the agreement should prohibit shooting across boundary fence lines.

### **Handling Harvested Game**

Landowners may stipulate where game such as quail may be cleaned and carcasses such as deer hung. Likewise, the disposal of bones and other inedible parts may be restricted if deer are cleaned and quartered on the leased premises.

The lease usually requires the hunter to keep all gates shut and possibly locked. If the hunter is given a key, it should be returned at the termination of lease privileges or the hunt.

### **Right of Inspection**

The landowner may reserve the right to inspect the camphouse, motor vehicles and the game bags of hunters and guests on the leased premises for compliance both with the lease terms and game laws. The same privilege extends to any game warden with the Texas Department of Parks and Wildlife.

### **Camp Safety**

The agreement may impose certain safety rules around the camphouse. In particular, procedures to ensure that all guns are checked and unloaded should be implemented. Also, consumption of alcohol may be prohibited.

### **Transferability of Lease Rights**

The lease should address whether the rights and obligations of either party to the agreement may be transferred or assigned. The lease may permit a transfer but only with the other party's prior consent. If all or a part of the leased premises are soldC*i.e.*, transferred, during the lease termC*the* impact, if any, on the lease should be addressed.

### **Hunting Rights of Landowner**

Generally, the lease grants the hunter or hunters the exclusive right to hunt. However, if it is not stated, some understanding should be reached concerning the right of the landowner, the landowner's family and guests to hunt.

### **Right of Renewal**

The hunter and the landowner may want to undertake long-term projects to enhance the habitat and hunting facilities. Because most leases are on a short-term basis, the hunter may want to include a right of renewal so hunters may reap long-term enefits from such projects. Likewise, the landowner may insert a renewal clause because of the favorable relationship the two parties have established.

Obviously, the hunter must comply with state hunting laws. The agreement should state this so a game law violation breaches the contract.

Until September 1, 1997, hunters had to complete a daily hunting ledger required by Section 43.0485 of the Texas Parks and Wildlife Code. The name, address and hunting license number of each hunter was entered along with the number and type of game harvested each day. The ledger is now optional with the landowner.

In addition to the ledger, landowners may initiate a sign-in and sign-out sheet posted at the entry to the property. Upon entering the property, the landowner determines who is on the property and where.

Finally, the landowner may want other pertinent information concerning harvested game. For deer, the landowner may require the hunter to:

- measure and record the spread and number of antler tines;

- record the weight;

- furnish photographs of the front, back and sides of each buck;

- save and provide to the landowner the lower jaw or one side of the lower jaw; and

- identify on a map the approximate location wherc each deer was taken.

In some trophy-hunting areas, landowners require hunters to mount the head of a trophy buck and display it at the ranch's headquarters for a specified period.

For quail, the landowner may want a record of the number of coveys flushed and where they were located. For harvested birds, record may be kept of the sex and a wing retained for aging.

### **Cooperation with Other Hunters and Surface Users**

Hunters must share the use of the surface with the landowner and possibly with other hunters and lessees. This includes those with grazing leases; farming

leases; and oil and gas leases. The lease needs a cooperation clause whereby the hunters agree to cooperate with other hunters and surface users and not infringe on their rights.

At the same time, conflicts may arise. For example, hunters using roads built by oil companies; oil companies drilling in prime hunting areas; landowners learning habitats for agricultural use; livestock ruining or destroying feeders and blinds; hunting dogs chasing livestock or poultry; and hunters killing or injuring livestock or damaging fences and gates all create potential problems.

The lease needs to address how to resolve these conflicts and liabilities.

### **Filing Lease of Record**

In some areas of the state, it is customary to record the lease agreements in the official county records. The lease can be recorded only if the parties sign the document before a notary public. Recording gives notice of the hunter's rights to the leased premises. The lease is effective, however, without being recorded.

The lease agreement may address recording. If either party insists on recording, a memorandum of the hunting lease may be prepared, executed by the parties before a notary public and recorded in lieu of the actual agreement. A memorandum gives effective notice of the hunter's rights without disclosing the details of the agreement.

### **Use for Nonhunting Purposes**

The hunter may want to use the leased premises for nonhunting purposes both in and out of hunting season. The activities may include camping, fishing, photography, target shooting and other recreational activities.

The activities permitted need to be described. Some limitation may apply as to where and when certain activities may be conducted in relation to the hunting season. Using bottles for targets should be prohibited.

### **Resolving Disputes**

Probably one of the most difficult issues is establishing the consequences for breaching the lease agreement. If neither party abides by the agreement,

the agreement is useless. To ensure compliance, some method of resolution needs to be established. Mediation or arbitration is a possibility.

Depending on the severity of the violation, the consequences may range from immediate termination of the lease without refunding the lease fees to the denial of certain privileges granted under the lease. This may include forfeiting the right to take a full limit of deer during the season or denial of the right to conduct off-season activities such as camping and fishing.

Obviously, the dispute resolution will be the most difficult issue to negotiate, yet it is vital to the overall agreement.

### **Imparting "No Trespass" Notice**

Texas landowners wishing to prevent trespassing and poaching should be aware of the methods described by the statutes. The Texas Penal Code (Section 30.05) states that a person commits criminal trespass in one of two ways. First, after receiving notice that entry is forbidden, a person enters and remains on the property without effective consent. Second, a person enters or remains on the property after receiving notice to depart.

Entry is defined as the intrusion of a person's entire body.

The statute describes five ways that landowners may impart notice that entry is forbidden. These include:

- (1) oral or written communication by the owner or agent;
- (2) fencing or other enclosures obviously designed to exclude intruders or to contain livestock;
- (3) signs posted at places reasonably likely to come to the attention of an intruder;
- (4) visible presence of crops grown for human consumption that are under cultivation, in the process of being harvested or marketable if already harvested; and
- (5) identifying purple paint marks on trees or posts.

The statute elaborates on the last measure added September 1, 1997. The purple paint mark must be a minimum of one inch wide and eight inches long, placed three to five feet above the ground and readily visible to anyone approaching the property. The marks must be placed every 100 feet on forest land and every 1,000 feet on all other land. *Forest land* means land on which trees are potentially valuable for timber products.

The statute excludes fire fighters and emergency medical services personnel while discharging their official duties in an emergency.

A violation of the statute is a Class B misdemeanor unless the intruder carries a deadly weapon. Then, the violation is a Class A misdemeanor. Class A misdemeanors are punishable by a fine not to exceed \$4,000, confinement in jail for no longer than one year or both. Class B misdemeanors are punishable by a fine not to exceed \$2,000, confinement in jail for no longer than 180 days or both.

Landowners who wish to report poachers may call the Texas Parks and Wildlife Department at 1-800-792-1112.

### **Landowner's Liability to Hunters**

A landowner's liability (or responsibility) for the safety of anyone entering the property depends on the legal classification of the person at the time of injury. There are four categories: an *invitee*, a *licensee*, a *trespasser* and *children under the attractive nuisance doctrine*. Theoretically, a hunter could fit in any one of these.

Fee-paying hunters are classified as invitees. Landowners have a legal duty to keep the premises safe for the invitee's protection. The landowner must give the fee-paying hunter adequate and timely notice of concealed or latent perils (dangerous conditions) that are personally known or that a reasonable inspection would reveal. Injuries caused by dangerous conditions that are apparent or that could be revealed by reasonable inspection are the landowner's responsibility, but comparative negligence may lessen the liability. (See reprint 893, "Landowner Liability for Hunters," for a complete explanation of comparative negligence.)

Nonpaying hunters with permission to hunt are

classified as licensees. Landowners have a legal duty to warn licensees of known dangerous conditions or to make the conditions reasonably safe. No inspection is required.

Hunters who enter without permission are classified as trespassers. The landowner owes them no legal duty. The law prohibits the landowner from willfully or wantonly injuring a trespasser except in self-defense or when protecting property. The landowner is liable for gross negligence or for acts done with malicious intent or in bad faith.

Trespassing children are protected by the attractive nuisance doctrine. (See reprint 475, "Landowners, Children and Perilous Conditions," for details.) An attractive nuisance exists when: the child is too young to appreciate or realize a dangerous condition; the location of the condition is one that the landowner knew or should have known children frequent; and the utility of maintaining the condition is slight compared to the probability of injury to children. The landowner may avoid liability if any one of these conditions is missing.

According to present revisions to Chapter 75 of the Texas Civil Practices and Remedies Code, agricultural landowners owe a recreational guest (hunter) no greater degree of care than is owed a trespasser if there is no charge for entry.

If there is a charge, the trespassory degree of care remains until the total charges collected during the previous calendar year exceed four times the total amount of ad valorem taxes imposed on the premises during the same period. Prior to September 1, 1997, the limit on charges was twice the amount of the ad valorem taxes.

However, even if the fee limit is exceeded, the trespassory degree of care continues if the landowner has specific amounts of liability insurance coverage in effect. These amounts are \$500,000 for each person, \$1 million for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Landowners achieve two advantages by having the minimum amounts of liability insurance. First, the trespassory degree of care continues to hunters when charges exceed four times the amount of the ad valorem taxes. Second, the stipulated amounts serve to cap the landowner's liability if sued for an act or

omission relating to the premises.

If the fee limit is exceeded without the minimum liability coverage in effect, then the landowner faces the degree of care owed to either an invitee or licensee, whichever the case may be. The amount charged has no effect on the attractive nuisance doctrine.

The hunting lease becomes a two-edged sword. Landowners receive an economic benefit for allowing entry to hunt. At the same time, they bear the risk and responsibility for the hunter's safety.

What, then, are the landowner's alternatives for limiting liability?

First, the landowner may charge no fee or charge no more than four times the amount of ad valorem taxes imposed on the hunting premises. This is not a viable option for large-scale hunting operations or where agricultural-use valuation is taken.

Second, landowners who charge more than four times the amount of the ad valorem taxes may purchase liability insurance according to the specified minimum amounts.

Third, the landowner can do as the law dictates: inspect the property routinely and either warn the hunters of the dangerous conditions or make the conditions safe. This may be difficult because conditions change rapidly. Notifying all hunters of a dangerous condition may prove impossible.

Fourth, the landowner may require the hunters to purchase and assign a liability insurance policy to the landowner covering the landowner's liability to the hunters. The minimum coverage should equal or exceed the limits mentioned earlier. Again, the premiums may cause the lease price to become prohibitive.

Fifth, the landowner may secure waivers from the hunters releasing the landowner from liability. A *waiver* is defined as the intentional relinquishment of a known right. To be effective, the release provision must meet certain standards.

For instance, the agreement must be based on an offer and acceptance between parties who have equal bargaining power. For this reason, a recent Texas appellate court ruled that parents cannot release, in advance, a minor's right to recover for personal

injuries caused by the negligence of another (*Munoz v. IJaz Inc. d/b/a Physical Whimsical*, 863 S.W. 2d 207 [1993]).

The agreement for the release must be based on consideration, but it need not be monetary. The agreement not to sue in exchange for the right to hunt may be sufficient.

The Texas Supreme Court has added three more requirements for an effective waiver agreement. First, the provision must state that the hunter indemnifies (releases) the landowner from any acts arising from the landowner's negligence. This is sometimes referred to as the Express Negligence Doctrine (*Ethyl Corp. v. Daniel Const. Co.*, 725 S.W. 2d 705 [Tx. S. Ct., 1987]).

Second, the written contract must give the hunter fair notice of the release provision. The fair-notice principle focuses on the appearance and placement of the provision, not its content. However, the fair-notice requirement is not necessary if the landowner can prove the hunter had actual notice or knowledge of the provision (*Spense & Howe Constr. Co. v. Gulf Oil Corp.*, 365 S.W. 2d 631 [Tx. S. Ct., 1963]).

Third, the release provisions must be conspicuous. The element of Aconspicuousness is tied to the previous Afair-notice requirement. Basically, the release provision must be conspicuous enough to give the hunter fair notice of its existence (*Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W. 2d 505 [Tx. S. Ct., 1993]).

How Aconspicuous is conspicuous? No absolute answer can be given. However, the following suggestions may be useful.

Make the written provision noticeable.

Emphasize the entire paragraph, not just a portion. Better still, place the waiver at the end of the contract on a separate sheet of paper.

Use headings but not misleading ones.

Italicize the headings.

Ask the hunter to initial the waiver provisions of the contract or sign the page if stated on a separate sheet.

For some protection from the attractive nuisance doctrine, the landowner or lease agreement may require all children to be accompanied by an adult.

A waiver form was presented by the late Dean Patton, an attorney with Morrill, Patton and Bauer in Beeville, Texas, at the 13th Advanced Real Estate Law Course sponsored by the Texas State Bar in 1991. The Real Estate Center has edited the form and included it at the end of this report. Neither Patton nor the Real Estate Center endorses the form. It is offered as an example only.

## Conclusion

This report lists some of the more important issues

that the landowner and hunter should resolve prior to or in conjunction with granting permission to hunt. Not all items apply to every lease. The terms must be tailored to the particular situation.

Preferably the lease agreement should be written and signed to establish the exact terms and conditions. A lease agreement allows all parties to realize the privileges both being granted and received for the consideration paid.

*This report is for information only; it is not a substitute for legal counsel.*



**RELEASE OF LIABILITY  
AND  
ACKNOWLEDGMENT AND ACCEPTANCE  
OF DANGERS, RISKS AND HAZARDS  
OF HUNTING LEASE**

I hereby acknowledge that I have knowingly and willingly entered a Hunting Lease Agreement, or become a party bound by the terms and conditions of a Hunting Lease Agreement by and between \_\_\_\_\_, et al. (hereinafter the Lessor, whether one or more), and \_\_\_\_\_, et al., dated \_\_\_\_\_, 19\_\_\_\_. I understand the terms, provisions and conditions of that Hunting Lease Agreement and agree to abide by its terms, provisions and conditions.

I further acknowledge and understand that no warranty, either express or implied, is made by the Lessor as to the condition of the hunting lease (hereinafter the leased premises) located in \_\_\_\_\_ County, Texas, or of any roads, buildings, gates or other improvements located thereon. This document serves to warn me that dangerous conditions, risks and hazards do exist. My presence and activities on the leased premises expose both me and my property to dangerous conditions, risks and hazards, including but not limited to: poisonous snakes, insects and spiders; blinds and tree stands, whether or not erected by Lessor; erosion and general condition of the land, both on and off roadways or senderos, creating rough, hazardous and dangerous driving and walking conditions; animals both wild and domestic that maybe diseased and/or potentially dangerous; deep water; persons with firearms both on or off the leased premises; and the use of vehicles. I hereby state that I am aware of these facts and expressly assume all such dangers, risks and hazards.

In consideration for the right to enter the leased premises, I hereby release and agree to protect, indemnify and hold harmless the Lessor and his or her respective heirs, agents, employees and assigns from and against any and all claims, demands, causes of action and damages, including attorneys' fees, resulting from any accident, incident or occurrence arising out of, incidental to or in any way resulting from the use of the leased premises and any improvements located thereon, whether or not caused by the Lessor's negligence or gross negligence. This release applies during the time that I am permitted on the leased premises. I hereby further covenant and agree that I, my heirs, successors and assigns will not make any claim or institute any suit or action at law or in equity against the Lessor or his or her respective heirs, agents, representatives, employees, successors or assigns by reason of conditions of the leased premises or activities occurring thereon.

As used in this release, the terms *I*, *my person* and *myself* include minors in my care while on the leased premises.

Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Hunter's Signature)

\_\_\_\_\_  
(Hunter's Printed Name)

Hunter's Address:  
\_\_\_\_\_  
\_\_\_\_\_

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