



Protect America's Climbing

Please note that the information contained in this publication is for informational purposes and should not be construed as legal advice. For answers to specific questions concerning your situation, you should consult a knowledgeable attorney who can advise you regarding your particular circumstances.

Recreational Leases – General Information

A recreational lease is an agreement between a landowner and an individual or group that allows certain uses of the land during a set time. Typical recreational uses include climbing, hunting, fishing, camping, horseback riding, snowmobiling, and cross-country skiing. Hunting leases are the most common recreational leases, although potentially some of the most challenging for multi-use situations.

There are several benefits of recreational leases. Climbing/Recreational leases can help owners who have trespass problems gain more control over their land and can add diversity and flexibility to usual operations and increase cash income.

Recreational leases are agreements between people, which means misunderstandings and disagreements can occur. The best way to avoid potential problems is to have a written contract that is signed by both parties.

An effective lease should clearly spell out the duties and rights of the landowner and the tenant. It should anticipate possible problems and describe how each would be resolved.

Important Considerations in Planning for a Recreational Lease

Type of Recreational Experience

The owner should think about the types of recreational experience the land and the local area could offer. The owner also should consider his or her degree of interest in creating and managing a recreational enterprise. What resources such as rock, water, lodging, or trails exist that make the land attractive for recreation, and how could these be enhanced? How much personal time does the owner want to spend to create a recreational experience?

In many states, landowners are given limited liability protection for accidents occurring on their property from recreational use if the landowner did not charge for such use. Some states allow for some fees if limited to a certain amount or specific use such as parking. It is important to consider this issue before entering into negotiations for a recreational lease with a landowner.

The following is a general description of the various sections of a lease and should help the landowner and climber/climbing organization in developing a lease. (NOTE: One should always consult an attorney before entering into any lease agreement, and if the landowner does not have an attorney, the climber/climbing organization must be careful not to provide legal advice to the landowner).

1. *Introduction* - This section should list the names of the persons involved in the lease - the landowner (lessor) and the climber (lessee), county and address of the property being leased. Lessees may include individuals (one or several), informal climbing groups, organized local climbing organizations, corporations (for employee and customer use), or outfitters/guides.

2. *Purpose of the Lease* - This should describe the purpose of the lease – climbing.

3. *Description of the Land Involved in this Lease* - This should be a clear description of the area included in the lease. Attach a map to avoid any misunderstanding of property lines or areas excluded from the lease. Specific non-climbing areas (pond, around dwellings, next to neighbors if potential problems might exist or develop) should also be noted.

4. *Terms of the Lease* - Starting and ending dates should be defined, as well as time restrictions within those dates (no climbing after dark, etc.). What climbing activities (e.g., bouldering, trad climbing, sport climbing) will the landowner permit? Guest privileges?

5. *Amount of the Rent and Payments* - See comments above. If a rental fee is appropriate, how much is the total rent, what are the payments and when are they due? Does the landowner require an advance deposit?

6. *Conditions of the Lease* - List what is or is not agreed to as terms of the lease. This is the landowner's opportunity to clearly identify the activities the landowner will allow the lessee to conduct on his or her land.

7. *Remedies for Breach of Lessee's Responsibilities* - This section should describe those conditions which will authorize the landowner, the lessor, or the climber/ climbing organization, as lessee, to cancel the lease. This should also describe any loss of rental payments. Cancellation of lease: Conditions under which the lease may be canceled by the landowner should include: failure to make lease payments or perform duties, unsafe or irresponsible conduct, property damage, and encroachment on neighbors. Either party may want the right to cancel upon 30 or 60 days' notice.

8. *Lessor's and Lessee's Responsibilities* - Clearly cover what the landowner has agreed to do for the lessee and any improvements the landowner will make for the lessee. There should be a clear understanding of what landowner is providing - climbing areas and access; electricity, water and space for camper; etc. Similarly, it should be clear what, if any obligations the climber/ climbing organization has for trash clean-up, maintenance of trails, etc.

9. *As is Clause* – Usually a landowner requires the lessee to take the premises as it is in its present condition.

10. *Assignment* - State if the landowner will or will not allow assignment of the lease or sub-leasing, with or without prior consent.

11. *Termination* - Clearly state when the lease ends and in what condition the land is to be left. Conditions for renegotiation and renewal?

12. *Landowner Liability or Indemnity Release Clause* - Owners increase liability risks when they allow people on their land. Landowners should assess potential risks such as unfilled wells, decaying trees, downed fences, etc., and decide whether and how to correct them. This can be done in at least five ways:

- check whether the existing property insurance policy already covers the liability risk, or if a premium increase would cover it;
- if leasing to a group or club, require the group to carry liability insurance; or,
- include a release-of-liability clause in the written lease.
- Include an indemnity clause, hold-harmless clause
- Warning signs

13. *Lessee's Liability* - State what the lessee's responsibility or liability is for any damage to land, structures, people, property animals. The landowner may want to require that lessee(s) obtain liability insurance to protect themselves and the landowner.

14. *Closing Formalities* - This section provides the formal wording for a witness or notary to sign.

Additional Lease Provisions

Each climbing lease must strike a balance between security and flexibility, and between the desires of landowner and climber. The following are some additional provisions or considerations the landowner/lessee may or may not wish to include in the lease:

Safety:

- No climbing under the influence of alcohol or drugs.
- Sign-in/sign-out requirement.
- Children under 16 accompanied by adult.

- Waiver

Care of property:

- Access to climbing area, parking, where and when vehicles are allowed over the fields.
- Improvements, such as wildlife plantings or climbing anchors, which lessees are allowed to make.
- Rules on opening and closing gates, crossing fences, etc.
- Restrictions on fires, stoves, grills.
- Restrictions on camping
- Restrictions on construction or use of structures
- Security deposit, payment for damages.
- Trash removal.
- Use of ranch operations buildings, toilets, water supplies.

Miscellaneous:

- Number of climbers permitted at one time.
- Climbing pressure (number of climbing days).
- Specific days (and hours) when no climbing is allowed.
- Number limit on guests.
- Members of the climbing organization (if lessee) must accompany any guests.
- Cattle grazing or other business or recreational rights for owner.
- Climbers will maintain posted signs.