

REFCLT Lease Agreement Explanation

Intent:

The REFCLT Lease Agreement is the primary mechanism that REFCLT utilizes to meet its goal of providing affordable land to individuals and groups that wish to further understand and develop sustainable methods of living on the land. This document is an attempt to put the REFCLT Lease Agreement in simple straight talking language about what rights and responsibilities a Leaseholder has. This explanation is not a legal document and may well contain errors or omissions. You are responsible for reading and understanding the Lease Agreement before signing; the authors hope that this document will serve you in that task.

The Lease:

The Lease is termed a 99 year automatically renewing perpetual lease. Theoretically it is possible to pay the lease fee once and pass it on indefinitely. The lease also provides a limited opportunity for financing via REFCLT as traditional lenders will most likely not be interested in this project.

Buying and selling leases and improvements:

Although many of the rights and privileges conveyed in the lease are similar to ownership of the land, leasing land from REFCLT is very different from ownership. Like conventional ownership, the lease fee is a one time cost. Unlike conventional ownership, you must be a member of REFCLT to lease land from REFCLT. It is also important to note that if all signers of a lease lose their membership, the lease reverts to REFCLT.

One of the most significant differences of the REFCLT lease from traditional ownership is the rather radical notion of making the determination of the value of land and buildings a community discussion. Leases may only be bought and sold at a price determined by REFCLT (not more or less than this price). This includes members selling their lease to other members. Currently the lease fees for this year and the next two have been set as follows: 2008 - \$1300/acre, 2009 - \$1350/acre, 2010 - \$1410/acre. This price is derived from a several factors specifically excluding profit for REFCLT.

Like conventional ownership, you own any buildings or improvements you make on your Leasehold. Unlike conventional ownership you may sell them to members in the method following, but you must get REFCLT permission to sell them to non-members. Improvements on a given Leasehold may be sold to other members for up to 5% more than the assessed value (less than that is OK). The assessed value is determined by mutual consent of the buyer and seller, or failing that each party selects an assessor. These two assessors select a third assessor and the three assessors determine the value. Like conventional ownership you can take any of these improvements with you

(if you can) provided you don't really mess things up doing so. If permission is given no restrictions are placed on the price of improvements to non-members.

One of the reasons behind REFCLT insisting on getting permission from members who wish to sell property to non-members is to reduce the possibility of non-members owning property (improvements) on the land, over which REFCLT has less legal power. In most cases, if the community is satisfied that such an event will not occur (ie. selling a house to be moved off site) then permission will likely be granted. In order to further insure that property on REFCLT remains owned by REFCLT members some additional restrictions are imposed. These include needing to get permission from REFCLT to name anything on your Leasehold as collateral in a loan. You are also asked to try very hard not to have any of your property named in a lien, and if it did happen you are asked to work very hard to fix it.

Making loud noises and other disturbances (D. 16.):

The lease expressly prohibits anything "which affects the air, water, soil, or sound environment" of the Leasehold and its neighbors except for things that are listed (and approved) in Appendix B (aka Nuisance Appendix) of the lease. This means that any activity you do or intend to do that might affect your neighbors in the above ways needs to be approved by REFCLT. This includes livestock/pet noises, machine/engine noises, runoff, smoke, etc.

This seemingly over-restrictive clause is in the lease for several reasons. One of the reasons is that it is simpler than the alternative of figuring out all the policies for all of those things. Another more important reason is that gives new members some good information about what their neighbors are or intend to do that they may not want to be close to (crowing roosters for example).

If a new Leaseholder is hoping to add some things to this appendix that the group is unsure of their tolerance for, they may be more acceptable if they come with a time limit and/or be limited to specific times of the day. For example heavy machinery noises could be restricted to daylight hours and/or be allowed for up to five years.

Making changes to the land (D. 17.):

Another very broad and seeming very restrictive clause in the lease states that no changes can be made to their leasehold except as described and approved in Appendix C (aka Land Use Plan). This means that the group expects the new Leaseholder to describe everything they intend to do on the land for the indefinite future, including buildings, earthworks, forestry, agricultural, etc.

Although this requires a significant amount of work on the part of the Leaseholder it has a number of benefits including that it requires the Leaseholder to plan ahead, it reduces the amount of time spent in group consenting to a new pond/building/etc., it allows the

Leaseholder to present their ideas as a whole which is often more palatable than elements individually, and additionally it obviates the need for policies regarding buildings, earthworks, agriculture, forestry, etc.

Since the Land Use Plan will undoubtedly take a significant amount of time, residents are encouraged to use their 6 month residency to think about and work on this.

Inheriting leases and improvements:

Also perhaps different than you might expect, in the event that the Leaseholder(s) die their Leasehold will be passed along in the following manner: REFCLT will accept applications for ninety days from any of the following people: persons named in the will as inheritors, a spouse or partner, children, members of the deceased's household group. If no application is received the lease reverts to REFCLT. REFCLT will then decide who to Lease to based on needs, desire, and ability. If someone is chosen to inherit the lease but doesn't want to become a member, or if they are not accepted for membership for some reason, when the land is re-leased the lease fee will be paid to the chosen inheritor. The significant difference from the conventional way is that REFCLT ultimately decides who is the most appropriate lessor of the land, not the deceased.

In the event that the Leaseholder(s) die their improvements are passed along in the traditional legal way. Hopefully this is the same person as the inheritor of the lease.

Termination of leases:

There are a number of ways your lease could be terminated and revert to REFCLT. If you give up or loose your membership in REFCLT your lease is simultaneously terminated (if you are the only signer). REFCLT may (or may not) terminate your lease if; you violate the lease in any way, fail to pay REFCLT on time (with warning), you are gone longer than six months without permission, or if you fail to do anything required of you by REFCLT as an outcome of arbitration.

If you terminate your membership (and lease) you are expected to sell your improvements at the same time. If your lease is terminated for any reason you have sixty days to leave and one year to sell your improvements. If you fail to sell your improvements they will be sold for you and the proceeds from the sale will be used to do any clean up, pay off any debts, and pay for the cost of the sale. You get the rest. If that ends up being a negative number, you owe REFCLT.

Conflict:

In the event that any disagreement comes up around the lease, all parties agree to enter into a defined arbitration process before pursuing legal action. The arbitration process is the same as the method for assessing fair market value of improvements (actually the reverse is more true). Each party selects an arbitrator. The two

arbitrators select a third and the three arbitrators pass a legally binding judgment.

Access:

Leaseholder(s) are required to allow people and human powered vehicles to cross their Leasehold on paths, the locations of which are determined by REFCLT but in practice will give a lot of priority to the preferences of the Leaseholder(s). Leaseholder(s) are also required to not obstruct these paths with fences (or similar) unless they also have the necessary gate, etc to allow traffic. All other types of traffic are restricted to roads, the locations of which are determined by REFCLT. There are no restrictions placed on any kind of traffic on one's Leasehold, so if you live next to the road you may drive on your Leasehold although routine driving on the land is discouraged. You cannot however build any kind of permanent road (driveway) without permission.

Misc:

The lease contains many of the standard legal clauses found in lease agreements. A brief summary of some of them: the Leaseholder(s) assume sole responsibility regarding the premises, REFCLT will pay property tax on the land, the Leaseholders(s) will pay property tax on the improvements, Leaseholder(s) shall hold harmless REFCLT against damage, waste, or trespass, if REFCLT chooses to pay any money on your behalf (property taxes for example) you will be charged the most interest possible, the Leaseholder(s) agree not to be a nuisance and are required to inform all guests, visitor, etc. of relevant restrictions (similar to Membership Agreement), if someone is living on your Leasehold for more than six months they need to sign a Residency Agreement with REFCLT, Leaseholder(s) have the "quiet enjoyment" right but also agree to allow authorized agents of REFCLT on their Leasehold to verify conformance to the lease, variances are allowed but require permission, if in doubt about anything get permission first.

There are certain things Leaseholder(s) explicitly cannot do without permission including, building roads, adding additional restrictions to the land (ie. conservation areas), subdividing the land (ie. selling off part of your lease), putting up signs larger than 1' x 5', and any form of mining. REFCLT may add to this list. REFCLT may restrict anything it chooses to later including things like clear cutting timber. REFCLT will not mine your land.

Modifications to the lease and the appendices:

Since it is doubtful that new Leaseholders will think of everything in their first Land Use Plan or may wish to do something in the future that may need to be included in the Nuisance Appendix, there is a simple specific mechanism for making changes. Namely all modifications to any part must be in writing and agreed upon by all parties.

Additionally some part of the Nuisance Apendix may have become unworkable for the group or REFCLT may want to change some of the wording of the lease itself. This doesn't mean that REFCLT can change terms of the lease without approval of the Leaseholder, but it does mean that the group can refuse changes to the Land Use Plan, etc. unless other changes desired by the group are also accepted by the Leaseholder.