



FARM COMMONS

Drafting A Lease: Questions For Farmers And Landowners To Ask

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Introduction

Using This list

This resource is meant to help both farmers and landowners understand what issues should be addressed before drafting a lease together. The list is organized as a checklist by category to introduce users to the areas that need attention in order to create clear and effective communication.

The best lease between a farmer and a landowner is a lease that accommodates the unique needs and expectations of the parties involved. A good farmland lease develops understanding between the parties and creates pathways to solve any problems that arise while farmer and landowner work together. The most successful lease is the one that never needs to be enforced!

Model leases can be useful, but they are best used as a framework on which to make modifications. An attorney is also helpful, but an attorney's strengths are generally in helping the parties memorialize their agreement in concise and accurate language. Many attorneys can help the parties brainstorm solutions to sticky issues, but farmer and landowner may already have all the solutions they need between themselves.

This question sheet is designed to get farmers and landowners started down the path of developing their own lease. A complete lease will address most, if not all, of the issues below. Farmland leases are different from residential leases in that the law allows commercial relationships more latitude than landlords and tenants, so creativity is welcome! Farmers and landowners should feel empowered to create unique working relationships in forming a lease that protects both of their interests.

When starting this process, the parties may not have a solid answer to some of the more difficult questions below. Starting with a statement of the parties' respective goals can help folks work towards a precise procedure. If the parties know where they want to go, it's easier to figure out how to get there. In addition, the parties may find that they cannot come to an agreement about these questions. That might be a disappointing conclusion, but it's much better to figure out that farmer and landowner won't be a good match before investing in the relationship.

Please keep in mind that there isn't a right or wrong answer for each of these questions. For many, the response may be, "yes, if the parties agree to do so," or "yes, if the landowner consents to it," or "yes, but the landlord reserves

the right to revoke said permission if the following circumstances exist...”
The right answer is the answer that works best for farmer and landlord.

Next Steps

After drafting complete answers to these questions, farmer and landowner will be more than halfway to a terrific lease. The next step will be to put these decisions on to paper. The parties and their attorneys should make sure that the various provisions as a whole work together: no conflicts or procedural holes should exist.

“The right answer is the answer that works best for farmer and landlord.”

Questions and Issues to Address

The Basics

- ☐ Who are the parties involved? Are they acting in their personal capacity or on behalf of a business, such as a farm LLC? Is everyone who needs to be represented at the table?
- ☐ Exactly what land is being leased? Do we have a precise legal description and map of the premises?
- ☐ When does the lease begin?
- ☐ When does the lease end?
- ☐ What is the rental payment, when is it due, and how should it be paid?
- ☐ Is there a late payment fee? If so, what is it and when is it assessed?
- ☐ Who is responsible for paying property taxes on the premises?

What rights does the lease grant to the farmer?

- ☐ Is the farmer allowed to engage in any commercial use of the property?
- ☐ Is the lease limited only to agricultural use of the property? What are we considering “agriculture?” Are agritourism events allowed? Can the farmer do any processing on the premises?
- ☐ Is this also a residential lease? Would the parties prefer to handle the residential lease separate from the commercial farmland lease?

It is often recommended to handle commercial and residential leases separately

- Can the farmer sublease all or any portion of the premises?
- Is the landlord granting an exclusive right to use, or will the landlord also be using the leased premises? If so, what potential conflicts might arise, and how should we manage them? Schedules of use? Types of use?
- If conflicts do occur, such as damage to property or lost revenue because of the other party's actions, should the party who loses be compensated?

Production-related issues

- Are there limits on the type of agricultural production allowed? Crops and livestock? Methods such as organic?
- Are there any land stewardship practices the parties would like to require of each other? Do those come with costs, and if so, who pays for those costs?
- If the tenant's voluntary conservation practices increase the value of the land, should the farmer's rent be reduced accordingly? Is there an alternative way to reward the farmer?
- Are there any production standards for the agricultural use of the premises such as a requirement to follow organic practices?
- Do we have specific standards for weed or disease control for either party?

Facilities

- Does the farmer have permission to use of farm equipment or resources (for example, timber, lumber) that may be on the property? If yes, how will equipment breakdown and maintenance be handled? Who pays for it and when does it need to be performed?
- Does the farmer have access to any storage? Are there associated terms on storage use such as types of products stored or timeframe for storage?
- Does the farmer have access to pack shed facilities or refrigerated storage?
- Is water for packing and processing provided in the lease? Where? Are any associated costs included in the rental agreement or are they separate?
- Is water for irrigation provided in the lease? How, and how much? If

Examples of resources that may be on the property include timber and lumber

“Regularly scheduled communication can help the farmer and landowner avoid problems”

unlimited, what is the expected capacity of the well/water supply?
If there are volume limits, do we have a way to measure usage?

- Who pays for any utilities to the property such as electric, trash, etc. If irrigation water is provided, who pays for the running of the pump and any repairs that may be necessary?

Renewal

- Does the lease renew automatically or do specific steps need to be taken by either party?
- If the lease renews automatically, when and how does either side give notice that they don't want the lease to renew?
- If the tenant decides not to renew, are there any duties he or she must fulfill? For example, planting cover crops.
- If the landlord decides not to renew, is the tenant compensated for any increased land value from improvements (for example, hoopouses constructed, soil amendments added)? If relevant, does the tenant have the right to remove improvements? If the latter, what conditions exist?
- Can the lease be terminated? This often happens on “default,” which means either party does something specific, which allows the other party to terminate the lease. Are there acts that you would like to designate as triggering a “default?” For example, using certain chemicals or practices.

A “termination” may follow different, less beneficial procedures than a non-renewal

Communication

- Regular communication can help the farmer and landlord avoid problems. Are annual or quarterly meetings appropriate? What things should be discussed at meetings?
- Are there specific issues that the parties agree to communicate to the other? Machinery? Animal health? When specific practices will be undertaken?

Transfer of lease

- ☐ If the farmer dies or decides not to continue farming, may the lease be transferred to another individual?
- ☐ What happens if the landlord dies? Most farmers will want to make sure the lease still attaches to any future landowners and so the lease should state as much.

OTHER CONSIDERATIONS

- ☐ Are we contemplating any “right of first refusal” or “option to purchase” if the landowner decides to sell? Is the lease convertible to a land contract? What are the details of this arrangement: how will the land be valued and what is the procedure for exercising the right or option?
- ☐ Who provides insurance? Is the tenant added as an additional insured to landowner’s policy, or does farmer need her or his own insurance? If landlord provides, are there any coverage thresholds desired by tenant/landowners? If so the lease should state as much.
- ☐ How should we manage potential future conflicts? Would the parties like to create a dispute resolution committee of neutral third parties to hear disputes and help suggest a pathway to resolution?
- ☐ Do we have any potential concerns about re-zoning of the property or neighboring development? Have we checked the comprehensive plan for the municipality? Is eminent domain a possibility and would the parties like to allocate any potential compensation provided under eminent domain in the future?
- ☐ Is the tenant contemplating specific long-term improvements such as building a pack shed or hoop house? Should there be provisions in the lease that create assurance such improvements will be allowed?
- ☐ Who is responsible for large-scale capital improvements to the land? For example, who is responsible to maintain access roads? When and how will it be done? Are costs shared?

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RACHEL
REPONDS

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