# Accessing Farmland Together

A DECISION TOOL FOR FARMERS

Land For Good

NATIONAL YOUNG FARMERS COALITION EST 2010

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The FRSAN-Northeast network consists of 35 organizations in 12 states and Washington, D.C. FRSAN-Northeast is divided into cohorts working to improve behavioral health awareness, literacy, access, and outcomes for farmers, ranchers, and farmworkers in the Northeast.

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Cover photo: Group of farmers farming on land together at Urban Edge Farm, Rhode Island (2012)
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## A DECISION TOOL FOR FARMERS

## Contents

# INTRODUCTION

### Many farmers are exploring ways to farm together.

The idea of being and sharing with other farmers is very appealing. Sometimes this is called "collaborative farming," "cooperative farming," or "collective farming." When farming as a group, you may share resources, assets, knowledge and skills. As a group, you could share equipment, inputs, marketing and/or labor. ***You could also share land.***

This tool focuses on group farmland access. The purpose of this tool is to help you make good decisions about group farmland access. It explores how you can find and use land in a group with other farmers. ("Farmer" and other key terms are defined in the definitions section below.) The tool provides information and considerations to help make good decisions about group farmland access. If you are interested in the other ways to "share farming" as named above, see "Cooperative Farming: Frameworks for Working Together" in the references section (p. 28).

### What is group farmland access?

Like many ideas about farming, "group farmland access" can mean different things. In this decision tool, ***group farmland access means two or more farmers using a specific property for commercial farming***. A group might also be farmers and non-farmers on land together. This decision tool describes some different ways to access farmland as a group. Each method has pros and cons. The right method for each farmer depends on a lot of factors. It is important to know your options so you can make a wise decision.

Group farmland access means interacting with the farmers in the group, on a piece of land. In fact, this is one of the strong advantages. The legal and social arrangements vary, as this guide points out. Sometimes a structure like a nonprofit organization oversees and unites the group of farmers. Farmers who rent land from the same landlord but do not interact with each other in meaningful ways would not be considered "group farming." They would just be independent tenants.

**The defining features of group farmland access in this tool are:**

- Farmers accessing a piece of land together (could be more than one parcel)
- A spirit of cooperation
- Purposeful interaction regarding land use and management among the farmers
- Some type of legal arrangement

There are many ways to think about group farmland access, more than are included in this decision tool. You might imagine building your own model. This tool will help you understand what's important and what might work for you. A method that works for one group might not be appropriate for another.

# INTRODUCTION

## Why focus on group farmland access?

Groups of farmers farming on land together is not a new concept. Throughout history, farmers have shared land by means of formal or informal arrangements. Many indigenous peoples have worked the land without artificial boundaries between them. In the U.S., settler colonialism, slavery and its aftermath, and policies based on the sanctity of private property have undermined group stewardship of land. In 1969, Black civil rights activists formed New Communities Land Trust and purchased 6,000 acres in Georgia. New Communities rented parcels of land to African Americans who farmed and lived there. A decade later, the New England Small Farm Institute began leasing small parcels of a 400 acre state-owned property to incubate groups of young farmer-trainees. Thirty years ago, immigrant farmers from Puerto Rico started Nuestras Raices to grow food on shared urban land in Massachusetts. These are just three examples. Farmers and communities continue to experiment with how group farmland access can make farmland more affordable and secure, and can foster a spirit of sharing and cooperation.

One of the biggest challenges for farmers—especially new and young farmers, and those from historically disadvantaged groups—is land access. Farmland is expensive to buy. Appropriate land is hard to find. Often renting land is insecure, so it is risky to make investments in the operation or the land itself. Plus, farming can be isolating. Pooling resources can make land access more affordable. Sharing land can reduce risk. Often, a group of farmers who share land access will also share in the other ways such as buying seeds, using wash stations and tractors, and delivering farm products to market. In many cases, farmer and farm labor housing are critical pieces of the land access puzzle. This tool focuses on farmland, but many of the considerations apply to housing as well.

## Working as a group

The idea of sharing land with others is attractive to some farmers. A spirit of cooperation, sharing resources, and connecting around a common vision can improve farmers' chances of success as well as quality of life. There are also challenges to group farmland access. Groups of people can be challenging to manage, even for those who are committed and get along. They may have a lot of history together, or are creating new relationships. Group farmland access involves a lot more than just getting along or sharing resources. It involves money, risk, control, decision-making, and accountability.

You need to be as clear as you can about why you want to farm this way, and what it might mean. Ask yourself, your farm partners, and your family:

- Why are you interested in group farmland access?
- What does a "group" look like for you?
- What is special or beneficial about it?
- What do you want from the group experience that you envision?
- What might you achieve through accessing farmland as a group that you could not achieve on your own?
- What could be the benefits and the disadvantages of being part of "group farmland access"?

### Doing It Your Way

Even if your group arrangement is informal, evolving, or a creative combination of methods, you still need to be clear (preferably in writing) about the legal arrangements and how the group will operate.

# INTRODUCTION

## Group farmland access involves three equally important kinds of relationships.

- Interpersonal relationships
- Management relationships
- Legal relationships

**Interpersonal relationships** are social. They are not technical. The legal structures won't be effective or enduring if the social dynamics are weak or dysfunctional. Social relationships can be complicated. Functioning in a group is very different from going it alone. Relationship basics such as good communications, managing differences and conflict, and effective decision-making are essential. Language and culture can add to the complexity. People and circumstances change over time. Shared values and good procedures help a lot, but even those don't guarantee success.

**Management relationships** are the glue between the interpersonal and the legal. They describe how the group is managed and governed. Sometimes these processes are laid out in legal documents. In other situations, group management is less formal, but nonetheless needs to be understood and accepted by all involved.

**Legal relationships** are the technical side. They are the "rules of the road." They focus on the arrangements among the parties and with the land, reflected in such documents as deeds, leases, and operating agreements. They are usually produced with the guidance of an attorney. These documents can be very technical and detailed. But they also help make rights and responsiblities clear. In fact, any arrangement of farmers on the land will involve some type of legal agreements. And while some agreements can be modified, these legal documents are taken seriously.

## The Purpose of this Tool

**The purpose of this tool is to help you make good decisions about group farmland access.** It is written from the perspective of the farmer's position on the land. You may have other roles, perhaps as a member of an equipment cooperative or of a land trust that owns the property. These are also "group" experiences.

This tool will point you to a group farmland access method that may work for you. It will give you some ideas about what to consider. But it is not a how-to guide. It will not tell you how to actually go through all the steps. You will likely need more information about the methods that interest you, and technical assistance to work out all the details and legal documents.

## Take your time and ask your trusted advisors for help.

This exploration is not easy. There is a lot to consider. There are a lot of concepts and terms to digest. The point is to be informed. These are major decisions. Relying on a vision and "good vibes" could lead to complications, if not failure. You want to be sure your arrangement is on solid legal ground. Equally important is developing trusted group relationships and processes. Some farmers discover that group farmland access isn't a good fit. Or that the timing isn't quite right. Or that the group isn't on the same page. Better to find out before you commit.

## SOME BASICS

### In all land tenure arrangements, including group farmland tenure, it is necessary to identify:

**1. The individuals & entities involved**
- What names are on the deed or lease?

**2. The land**
- Where are the boundaries?
- What infrastructure and other features are included and how are these divided or shared?

**3. The legal arrangement**
- What documents are necessary?

**4. The advisors**
- What advisors will you need such as an attorney or financial consultant?
- What about a cooperative development or farm lease specialist, realtor, or mediator?

### How will the group function?

As you zero in on the strategy that could work for you, answer these questions:

- What are the values that unite the group? What is the "group spirit" or culture?
- What is the group structure? How would the arrangement be described?
- Does the legal structure adequately reflect the group's values?
- Who decides what? What are the processes for making decisions and sharing responsibilities?
- What are the commitments and obligations? Who is responsible for what?
- What happens if things aren't working out?
- How do individuals join or leave?

### Four key questions will guide your exploration:

- Who is in the group?
- What are the legal structures and agreements?
- What documents are required?
- How are social relationships managed?

### Hints for Success:

- Shared vision and values.
- Contracts and agreements up front.
- Equity in all arrangements including equitable exit.
- A framework for discussion, decision-making and compromise.

## SOME BASICS

**A few definitions will help you understand and use this decision tool.**

**Cooperative:** an entity that is owned and democratically controlled by its members. Not to be confused with "cooperative farming" as a description.

**Deed:** in this case, a document that declares legal ownership of real estate.

**Entity:** a form of organization with distinct legal rights. In this tool we talk about three types of entity.

A **business entity** is the legal structure of the farm business. The typical choices are partnership, limited liability company (LLC), and cooperative. (S and C corporations are not addressed in this tool.) It is important to understand the characteristics of the different types of business structures and how each might affect you personally.

**Sole proprietorship** or doing business as (DBA) is included as a business entity in this tool, although technically it is not a distinct legal entity. Sole proprietorship does not provide liability protection to the business owner, so personal assets are at risk.

A **real estate entity** is a legal structure that owns real estate. In this decision tool, this could be a limited liability company (LLC) or a cooperative.

*Sometimes a business entity also owns the real estate. Often, though, it is advised to separate the business from the real estate.*

A **nonprofit organization** is also a type of entity. Nonprofits are usually organized as corporations. In this tool, a nonprofit organization could be a group's landlord or a master tenant.

**Farmer**: an individual person or persons who operate a farm.

**Farm or farm business**: an entity that produces agricultural products for sale. See definition of entity.

**Group:** Two or more farmers accessing land together. In some cases, a group consists of farmers and non-farmers.

**Land:** a parcel of land suitable for farming that may include structures, water features, house(s).

**Landlord:** the person(s) or entity that owns the land and rents to farmer-tenants. There are different types of landlords. The type of landlord can make a big difference. You can find out more in the section on landlords.

**Lease**: a contract that grants the tenant certain exclusive "interests" (legal rights) in the owner's property for a specified period of time.

**License:** a contract that gives the licensee permission to do something on the owner's property.

**Master tenant:** an entity that directly rents from the landlord, and then subleases to other entities.

**Rent**: to have possession and use of a property in exchange for payment. In this tool, a tenant can rent from a landlord via a lease or license.

**Tenant:** the farmer who rents land from the landlord. In this tool, tenant means a farmer who has a lease or a license to occupy the land.

## HOW TO USE THIS TOOL

- **Follow the steps below** to guide your process.
- **Refer to the decision tree** diagram of the options (p. 9).
- **Fill in the Worksheets** to help you think through your group farmland access strategy. Feel free to print them out.
- **Refer to the Examples** of farms using the methods (pp. 25-27).
- **Read about some legal considerations** in the Appendix (pp 29-35).

### Decision Tool Steps

**1. Is group farmland access right for you?**
**Complete Worksheet A. Self-assessment (pp. 7-8).** Write your answers in the spaces provided for each question.

**2. Who are you?**
Choose the group ***type*** that best describes your situation now or what you would like. There are four choices. Refer to the decision tree. **Complete Worksheet B. Group Type (p. 12).** Write your answers in the spaces provided for each question.

**3. Do you want to own or rent land?**
Remember, in this decision tool, rent or own are the two choices. You may want to explore both options.

**4. What method could work for you?**
Next, learn about the ***methods*** that are available under your choices. You will also find examples of some of the methods in the last section of the tool.

**5. What do you need to consider?**
This list of guiding questions will help you decide and stimulate more research. **Complete Worksheet C: Considerations (pp. 21-24).** Write your answers in the spaces provided for each question.

### Interactive Features & Color Key

- In the Decision Tree on page 9 you may click the numbered **GREEN question blocks, Group Type, Own, Rent,** or **Method** blocks to skip to the corresponding pages to read more.
- The green icon in the bottom right corner will bring you back to the decision tree on page 9.
- **ORANGE** elements correspond to owning land.
- **BLUE** elements correspond to renting land.

## WORKSHEET A

**Self-assessment: Is group farmland access for you?**
*Write your answers in the spaces provided for each question.*

1. What is your land tenure situation now? What works and doesn't work?

2. Why are you interested in group farmland access?

3. What does a "group" look like for you?

4. What is special or advantageous about it?

*Continued >*

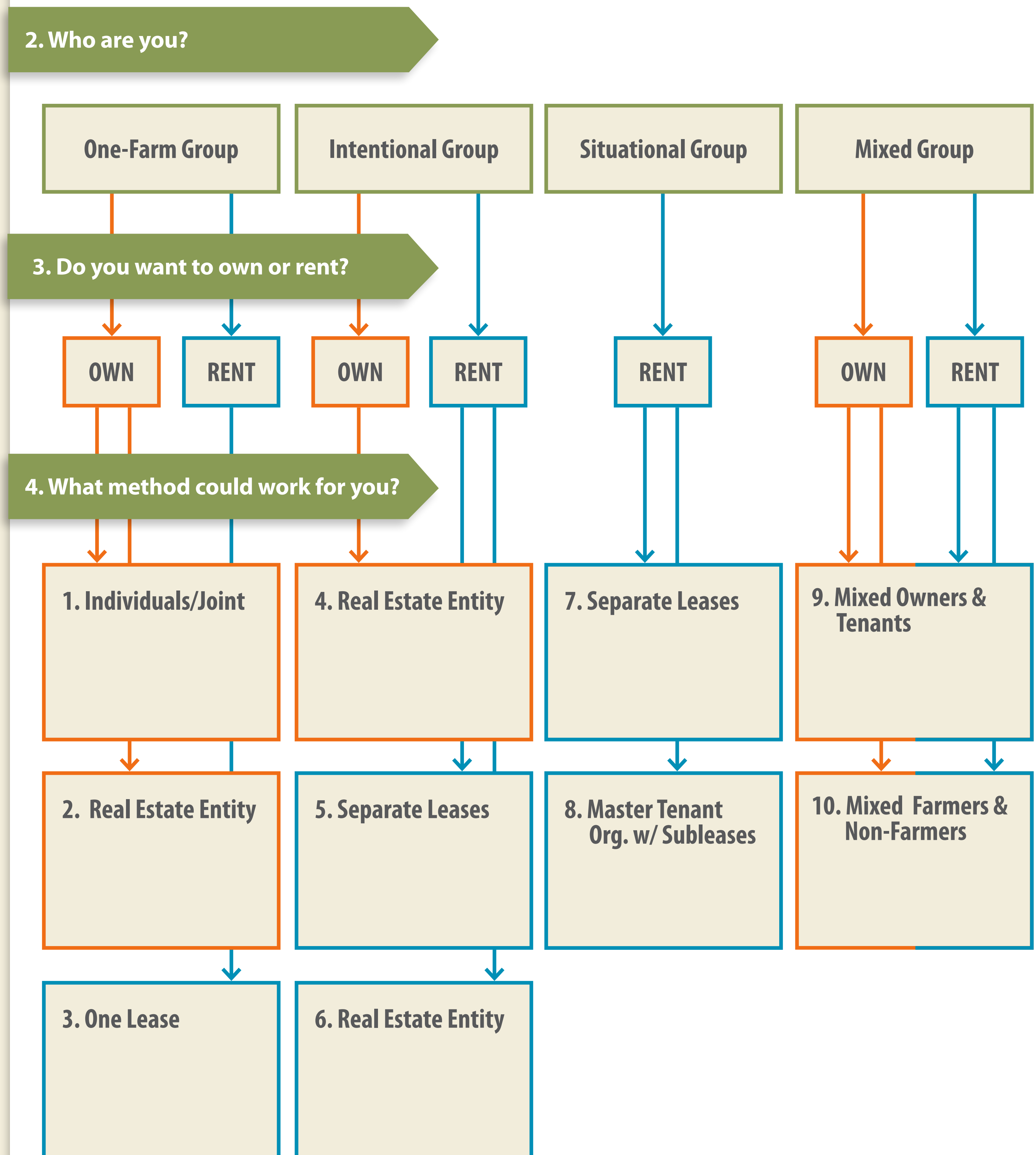
## WORKSHEET A

**Self-assessment: Is group farmland access for you?**
*Write your answers in the spaces provided for each question.*

5. What do you want from the group experience that you envision?

6. What might you achieve through accessing farmland as a group that you could not achieve on your own?

7. What could be the benefits and the disadvantages?


2. Who are you?
One-Farm Group
Intentional Group
Situational Group
Mixed Group
3. Do you want to own or rent?
OWN
RENT
OWN
RENT
RENT
OWN
RENT
4. What method could work for you?
1. Individuals/Joint
4. Real Estate Entity
7. Separate Leases
9. Mixed Owners & Tenants
2. Real Estate Entity
5. Separate Leases
8. Master Tenant Org. w/ Subleases
10. Mixed Farmers & Non-Farmers
3. One Lease
6. Real Estate Entity

Own Rent

# 2. WHO ARE YOU?

### What type of group are you or would you like to be?

This guide describes four basic ways for a group of farmers to access land together. Here these are called group types. These may seem over-simplified or arbitrary. Surely there are variations and other options. The objective is to help you clarify your particular arrangement and what you expect from it. Read about these group types. Then, find the group type of interest. You may be interested in more than one. Remember that your arrangement could be a combination or variation.

Whatever group type you are or hope to be, success depends on how the group functions. Some group types involve more interpersonal process than others. Regardless of the group structure, social relations, decision-making procedures and accountability are key. *See links to some helpful resources in the Resources section.*

**Here is a summary of the group types:**

**One-Farm Group**

A single farm business with multiple farmers owns or rents a property.

**Intentional Group**

Separate farm businesses commit to owning or renting a property together.

**Situational Group**

Separate farm businesses independently rent portions of a property, connected by an overarching mission or framework.

**Mixed Group**

Farmers and non-farmers rent or own a property together OR some farmers own a property & other farmers rent from them.

*Continue onto the next page for further details on each group type >*

## 2. WHO ARE YOU?

**One-Farm Group**

In this group type, a group of farmers farm as one business. Their business is a single entity, with one name, one tax ID number, one set of books, etc. The significant feature is that these farmers hold land as a single entity.

**Intentional Group**

In this group type, a group of farmers gets together with the expressed intention or commitment to access land together. In an intentional group, each farmer has their own farm business entity. They buy or rent land together but they keep their own separate businesses. The significant features of this scenario are: 1) the farmers have intention to access land together as a group; and 2) the farmers have separate farm businesses. These farmers may also share equipment, inputs, marketing and/or labor.

**Situational Group**

In this group type, farmers arrive independently to rent some land from a landlord. Other farmers rent other portions of the land from the same landlord. The farmers don't commit to one another beforehand; they probably don't even know each other before getting onto this land. Each has their own business entity and their own lease or license. In this situation, the landlord is usually an organization with a mission that unites the farmer-tenants. A farm incubator and community farm are examples.

The significant features of this scenario are: 1) no prior group commitment or planning; 2) each farmer has a separate business; and 3) there is some overarching structure that gives a "group" feeling or connection. Farmers in this situation may also share equipment, inputs, marketing and/or labor. They may also benefit from services offered by the landlord organization.

**Mixed Group**

This group type consists of two types of mixed groups. One is a mix of farmers and non-farmers. The non-farmers could be residents. They could have other businesses on the shared property. They could be members of an organization that owns or rents the property. A community land trust is an example. The other mix is where some farmers own land and other farmers rent from the farmer-owners. The basic questions still apply to these mixed groups. Who is the group? What are the entities? What are the agreements? What required documents?

**Use WORKSHEET B to think about your group type**

## WORKSHEET B

**What Type Of Group Are You Or Do You Want To Be?**
*Write your answers in the spaces provided for each question.*

| One-Farm Group | Intentional Group | Situational Group | Mixed Group |
|---|---|---|---|
| *A single farm business with multiple farmers owns or rents a property* | *Separate farm businesses commit to owning or renting a property together* | *Separate farm businesses independently rent portions of a property, connected by an overarching mission or framework* | *Farmers and non-farmers rent or own a property together OR some farmers own a property & other farmers rent from them* |

Which group type comes closest to what you have or want?

What about that group type is attractive to you?

What is the "story" of your group, or the group situation you desire?

## 3. DO YOU WANT TO OWN OR RENT?

**Tenure—how farmland is held by a farmer—is a major factor in the viability of a farm business.** "Tenure" means to hold.

**There are basically two ways to hold land: own it or rent it.** Many farmers do both—they own some land and rent additional land. You or your group could do that too. Whether you access land on your own or in a group, the decision to buy or rent land for farming is major. It is important to understand the realities of both buying and renting land. This tool will look at both group owning and group renting.

### OWN

Buying real estate is a big step. And buying land with others is a huge commitment. It can be a meaningful reflection of your values about land ownership and sharing responsibility for land as well as a smart business decision. But it can also create relationship tensions and financial challenges. USDA research showed that beginning farmers without land debt are more likely to succeed in the long run. Can your group afford the initial purchase? Can you and the others carry ownership costs over time? Who or what entity should be on the deed? How is equity in the real estate divided and adjusted? How do you get out if you don't want to own anymore?

It might make sense to get more information about your financial situation, and the financial capacity of others in your group, if that is relevant. There are several tools out there to help with this.

Most beginning and low-resourced farmers cannot afford to buy land, even with others. Some feel it is not necessary or desirable to own land. For them, renting makes sense. Depending on the type of agreement and the terms, a farmer-tenant can experience many of the rights of ownership.

*Continue onto the next page for details on Renting >*

## 3. DO YOU WANT TO OWN OR RENT?

### RENT

Farmers rent land with a lease or a license. A lease gives a tenant certain rights in the leased property whereas a license only gives permission to use it. This may not seem significant, and in many ways, the distinction won't impact farm life. But the differences can matter. For example, a license can be revoked at any time, whereas a lease has provisions that protect the tenant from arbitrary termination. Some landlords such as public agencies are prohibited from executing leases. It is important for you and your group to understand the differences between the two types of contracts. Both can be oral (spoken but not written down) agreements, but it is nearly always advised to have the agreement in writing. Also, there may be other fees in addition to land rent.

Sometimes a license or short-term lease is adequate—or the only option that is offered by a landowner. Some leases offer long-term security of many years. What land security is essential for you? What terms and conditions do you or your group need to be successful?

In some situations, renting can lead to ownership. With lease-to-own you or your group could purchase the leased property in the future. With a ground lease you rent the land and own the improvements such as a house and farm buildings. If these sound interesting, find out more from the links in the resources section.

### Types of landlords

If you choose to rent, it's important to be informed about your landlord. There are different types of landlords. A farm landlord could be a private individual, family or institution, a nonprofit organization, or a public agency. It could be a land bank, town, church or land trust.

The landlord can make a big difference. A large institutional landlord may have a lot of paperwork and procedures. A nonprofit landlord may be particularly interested in farmers of color or LGBTQ, immigrant or refugee farmers. Land owned by a public agency or community land trust will never (or rarely) be for sale. So if wealth-building in land is a priority, these options might not be as attractive. A nonprofit community farm may have specific requirements for all farmer-tenants in "the group." On the other hand, a private landlord could be more nervous about liability than an organization.

Some landlords are "hands-off" while others may want to be very involved in land management. Some have mandates, missions and regulations. If the landlord is a community land trust, farmer-tenants are likely to be members of the organization. In that way, they participate in the landlord role and have a say in the lease arrangement.

It's really important to learn about a potential landlord. What are their objectives? What is their style? What is their history with other tenants? Can you look at a current farmer lease?

## 4. WHAT METHOD COULD WORK FOR YOU?

*You have thought about what type of group you are or want to be (STEP 2), and whether you want to rent or own land (STEP 3). Now you can learn about some ways to make it happen.*

**These are called methods. Each method has pros and cons. Refer to the decision tree to orient yourself around these methods.**

At this point, you may think this is all too much detail, too complicated, too formal, too much "legalese." It's tempting to rely on good intentions and good "vibes." Indeed, informal arrangements can be appropriate and sufficient for some groups. But without doing the homework, informal agreements and assumptions can result in conflict, hard feelings and failure.

### One-Farm Group

#### 1. Individuals/Joint

In this method, the individual farmers purchase the land together. Their own names are on the deed. This is called joint ownership. It's important to understand the options for structuring joint ownership ("joint tenancy" or, preferably, "tenants in common"). As the landowners, the farmers would lease the property to their one-farm business entity.

***This method, in which several farmers own land as individuals, is not recommended; see the Appendix (p. 29).***

#### 2. Real Estate Entity

In this method, the farmers in the one-farm business form a separate real estate entity (LLC or cooperative) to own the land. This entity then leases to the farm business. It is often considered good practice to separate the real estate from the business.

***See examples on page 25.***

#### 3. One Lease

In this method, the one-farm business entity rents from a landlord. There is one lease. The farm business entity is the tenant. The landlord could be a private individual, family trust, organization, agency or other. See the section on landlords.

***See examples on page 25.***

## 4. WHAT METHOD COULD WORK FOR YOU?

### Intentional Group

### 4. Real Estate Entity

In this method, each farmer has their own farm business. The farmers form a real estate entity (LLC or cooperative) to own the land. In some cases, it might make sense for the farm business entitues to be members of the real estate entity, rather than the individual farmers. The real estate entity leases different parts of the land to each separate farm business.

***See examples on page 25.***

### 5. Separate Leases

In this method, each farm business has a separate lease with a landlord for a certain portion of the land. Their leases may allow for shared infrastructure.

***See examples on page 26.***

### 6. Real Estate Entity

In this method, the separate farm businesses form a business entity (typically an LLC or cooperative) together. This entity rents land from a landlord. It is the "master tenant" and holds the "master lease." The individual farm businesses then have a sublease or license from the master tenant. The landlord deals with one tenant, which some landlords prefer. Subleases and licenses must follow the terms of the master lease.

***See examples on page 26.***



Own Rent

## 4. WHAT METHOD COULD WORK FOR YOU?

### Situational Group

#### 7. Separate Leases

In this method, each farm business has its own lease or license with the landlord. The farm businesses are the tenants.

***See examples on page 26.***

#### 8. Master Tenant Org. w/ Subleases

In this method, an organization leases a parcel of land from a landlord. It is the "master tenant." Each farm business then rents, with a sublease or license from the "master tenant" organization, a portion of the leased land. Each farm business is a sub-tenant. Sub-tenant agreements must follow the terms of the master lease. In this method, there is only one tenant for the landlord to deal with.

***See examples on page 27.***

## 4. WHAT METHOD COULD WORK FOR YOU?

### Mixed Group

#### 9. Mixed Owners & Tenants

In this method, some farmers own the land and rent parts of it to other farmers. So some farmers are the landlord and some are tenants. This could be a casual or temporary arrangement, but the suggestions about clear legal and social arrangements apply here too.

***See examples on page 27.***

#### 10. Mixed Farmers & Non-Farmers

In this method, farmers and non-farmers own or rent land together. They would form a real estate entity if they choose to own the land. Typically, individual farm businesses would lease from the real estate entity. The non-farmers could be individuals and families, community gardeners or crafts people, for example.

***See examples on page 27.***

## 5. WHAT DO YOU NEED TO CONSIDER?

**What should you think about for the methods that interest you? What questions should you be asking?**
*Whatever method you pursue, it is most important to have the right entities, solid agreements and clear relationships.*

**Here are some guiding questions.** Not every question is relevant. For example, if you are set on owning land, considerations about leases may not apply. You will likely have other questions. Getting more information and advice at this stage is critical.

**1. What names are on which documents?** Is it your own name? Or your DBA (doing business as a sole proprietor)? What is the legal entity of a landlord? This matters!

**2. How does this method address affordability at the start?** Can you and your group afford the initial costs of purchasing a property? How will those expenses be shared? If the method involves renting, can you afford the rent and other fees? How will these be adjusted over time?

**3. How does this method address affordability over time?** Can you and your group carry the long-term costs of ownership or the rental fees? If purchasing, how much of your net worth is it prudent to invest?

**4. How does this method address security on the land?** Ownership offers maximum security. By comparison, an annual lease or a license are not very secure. But short-term security, such as at an incubator farm, may be adequate.

**5. Does this method allow building wealth in land?** In any ownership method, you will have equity which typically would increase according to the terms. Some leases guarantee or allow for the possibility of owning the land in the future. How is equity in the owned assets divided among the group members? How is value adjusted over time?

**6. How does this method impact farmers' independence and control on the land?** Whatever entity owns the land has a say in how occupants use it. This could be a public or private landlord. Or it could be your own real estate entity. Who sets the rules? How are they enforced? Can your group live with the proposed restrictions and obligations?

**7. Who owns and maintains infrastructure on the parcel?** What about improvements? Whether you own or rent, this can be challenging. Who should be responsible for maintenance and improvements? Who approves? Who pays? How are water and utilities handled? What happens when the rental term ends, or the property is sold?

**8. How will the businesses interact?** How will they address, for example, food safety requirements, crop rotation, and sharing infrastructure? How might each business's timeline impact others?

**9. How is liability handled?** Questions about liability must be addressed, even among the friendliest of groups. Who needs what insurance policies? Who is responsible?

**10. How is farmer and farm labor housing addressed?** Is housing part of the arrangement? If your group is interested in owning or renting housing together, even more questions apply.

*Continued >*

## 5. WHAT DO YOU NEED TO CONSIDER?

**11. How do farmers enter and get out of the arrangement?** Whether owning or renting in a group how do you exit? What are the terms? How would new farmers join the group? A farmer who wants to leave a community nonprofit as part of a "situational group" has very different considerations from a farmer who needs to sell her equity in land owned by an "intentional group."

**12. How are administrative procedures and decision-making handled?** All group farmland access methods have to be clear on this. Who decides what? How are requests and permissions processed? Will you have regular meetings? With whom? What about language and cultural barriers? Poor group process is one of the main causes of failure with any of these methods. How will your voice be heard? Do you have a say in new members of the group? Who is responsible for compliance (e.g., taxes, annual filings, record keeping) that might be needed?

**13. How does this method affect farmer's ability to borrow capital?** You may need to borrow money to purchase land and/or to operate your farm business. Who is the borrower? How do your business's needs for capital intersect with the financial status and needs of the group? How will a lender view your arrangement?t

**14. How does this method affect farmer's participating in USDA or other programs?** Can you apply as your own farm business? Is the group eligible? How will USDA treat your group situation?

**15. What are the risks and pitfalls of this method?** Honest assessment of the risks and pitfalls is crucial. As rewarding as group farmland access can be, it takes work to succeed. The advantages of affordability, for example, must be weighed against any risks from relying on and working with others. The rewards of sharing land depend on putting in the time and effort required to make a group—your group—function effectively.

**Use Worksheet C to explore the answers to these questions for the methods that interest you.**

## WORKSHEET C

**Considerations: What do you need to think about?**
*Write your answers in the spaces provided for each question.*

1. What names are or will be on which documents?

2. How does or will this method address affordability at the start?

3. How does or will this method address affordability over time?

4. How does or will this method address security on the land?

*Continued >*

## WORKSHEET C

**Considerations: What do you need to think about?**
*Write your answers in the spaces provided for each question.*

5. Does or will this method allow building wealth in land?

6. How does or will this method impact farmers' independence and control on the land?

7. Who owns and maintains, or will own and maintain, infrastructure on the parcel? What about improvements?

8. How do or will the businesses interact?

*Continued >*

## WORKSHEET C

**Considerations: What do you need to think about?**
*Write your answers in the spaces provided for each question.*

9. How do or will you handle liability matters?

10. How is or will farmer and farm labor housing addressed?

11. How do or will farmers enter and get out of the arrangement?

12. How are or will administrative procedures and decision-making be handled?

***Continued >***

## WORKSHEET C

**Considerations: What do you need to think about?**
*Write your answers in the spaces provided for each question.*

13. How does or will this method affect farmer's ability to borrow capital?

14. How does or will this method affect farmer's participating in USDA or other programs?

15. What are the risks and pitfalls of this method?

## EXAMPLES

### Method 1: Individuals/Joint

This method, in which several farmers own land as individuals, is not recommended; see the Appendix (p. 29).

### Method 2: Real Estate Entity

**Four Root Farm**. Four individuals own the farm business as an LLC. The same four individuals formed a second LLC which purchased the land. The business LLC rents from the land LLC. The four farmers each have a 25% stake in each entity. Their agreements articulate a fair division of the financial and physical upkeep of the land and two houses on the property. In their agreements, a farmer could exit from the farm and still live on the land, or continue to be part of the business but sell their interest in the real estate.

**Bumbleroot Organic Farm.** At Bumbleroot Organic Farm, four individual farmers (two couples) formed a real estate (landholding) LLC to buy 89 acres of land that included two residences. They also formed Bumbleroot Farm LLC (the farm business) which rents land from the real estate LLC. Equity in the land is adjusted based on each farmer's investment in it. A farmer wishing to leave would get what they put into the land asset, along with any equity in the farm business. The remaining farmers could buy, or find another farmer to buy, ownership shares in the land.

**Letterbox Farm**. In New York's Hudson Valley, Letterbox Farm is an LLC owned by three members. These three members also formed a separate LLC that owns the real estate, with shares divided unequally among them. Initially, there were non-farming ownership members of the real estate LLC. This turned out to be challenging, so the farmers bought out the non-farmers.

### Method 3: One Lease

**Diggers Mirth Farm.** Founded in 1992, Diggers Mirth Farm is a worker-owned and operated LLC with five members who are the farmers. They lease 15 acres from Intervale Center, a Vermont nonprofit landowner (see Method #7).

**New Roots Cooperative Farm** is the first immigrant-owned cooperative in Maine. The four owners, originally from Somalia, leased property acquired by Maine Farmland Trust for six years. In January 2022, NRCF purchased the farm.

### Method 4: Real Estate Entity

**Six River Farm.** After several years of renting land, six farm businesses purchased preserved land in Maine. No individual farmer wanted to buy the land and rent to others, so they formed Brownes Point Farmland LLC. Of the original six members of the LLC, four were farm businesses (LLCs) and two chose to be members as individuals. With a loan from Coastal Enterprises, Inc., this Brownes Point Farmland LLC purchased the land. In 2019, two farm operations exited from the LLC, selling their interests to the remaining four members.

*Continued >*



Own Rent

## EXAMPLES

### Method 5: Separate Leases

**Global Greens** is an agriculture program of Lutheran Services in Iowa that serves former refugees. A group of farmers who trained together in GG's program will move on to lease land owned by another nonprofit. The farmers in this cohort each have their own businesses (currently DBAs intending to mature into entities such as LLCs) that will be the tenants. Their shared experience as program trainees and former refugees motivates them to take this next step together to overcome individual barriers to land access. Eventually, some of them may move onto other land.

### Method 6: Master Tenant (farmer entity)

**Somali-Bantu Community Association/Agrarian Commons.** SBCA is a 501(c)(3) nonprofit organization offering a variety of programs and services to the Somali Bantu community in Maine. SBCA raised funds for the purchase of a 104-acre farm for SBCA's Liberation Farms program which serves over 200 families. The land is owned by Little Jubba Central Maine Agrarian Commons, a local community land trust under that national nonprofit organization, Agrarian Trust. SBCA is the master tenant with a long-term lease. At this point, the Liberation Farm growers are program participants, some of whom grow for market in a subgroup and have signed "participation agreements."

### Method 7: Separate Leases

**Grow Food Northampton.** GFN is a 501(c)(3) nonprofit community farm that owns land in western Massachusetts. It leases land to multiple commercial farmers. One "anchor tenant" is a CSA farm with a 99-year ground lease. The other farmers have short-term leases and share infrastructure such as sheds and water. All tenants must abide by GFN stewardship guidelines.

**Intervale Center.** Intervale Center, founded in 1988, owns 350 acres in Burlington, VT. It transitioned away from being a farm incubator to a multi-program farmer support nonprofit that leases plots of land to six farm businesses, four of which are LLCs. Most of the farm businesses are also members of the Intervale Farmer Equipment Company LLC that shares ownership of equipment, greenhouses and other physical assets.

*Continued >*

## EXAMPLES

### Method 8: Master Tenant

**New Entry Sustainable Farming Project.** NESFP is a nonprofit organization with multiple farmer and food access programs. It leases land in Massachusetts from a conservation organization. In turn, NESFP's Incubator Farm Program offers a "program agreement" (a contract) to small, independent commercial farm businesses for plots of land and shared infrastructure. These "program agreements" are not technically leases because the landowner does not allow subleasing. Nonetheless, requirements are spelled out in an accompanying manual.

**Nuestras Raices**. This nonprofit organization owns five acres of land and rents additional land in a western Massachusetts city. In turn, it leases its land or subleases its rented land as small plots to gardeners and small-scale commercial growers. Water is provided, along with some training and technical assistance. Farmers can exit by terminating their lease with NR.

**Urban Edge Farm/SSCLT.** Southside Community Land Trust in Rhode Island has a long-term lease with the state's Department of Environmental Management for 50 acres of land. SSCLT subleases to 8 separate farm businesses. These businesses also share infrastructure and a "sense of collective responsibility." Several years ago, the farmers explored creating a cooperative but decided not to.

### Method 9: Mixed Owners & Tenants

**SEAMarron Farmstead**. A married farming couple purchased 3 acres of land to grow produce and raise bees in Connecticut. The business is under separate ownership, with family and friends helping out on the farm. The landowning farmers offer small plots to others to grow food through informal arrangements which they plan to formalize with leases. Some tenants may pay rent in the form of labor on the landowners' farm.

### Method 10: Mixed Farmers & Non-Farmers

**Celebration Tree Farm & Wellness Center.** CTFWC is a cooperative (formed as an LLC) comprised of three individual "worker members." The cooperative has a 99-year land lease from Land in Common Community Land Trust, the landowner. CTFWC also leases additional land owned by two members of the cooperative. They are a "mixed group" because two members are engaged in agri-forestry on the land, and one of the members runs the wellness center there, which is not a farm business. In the future, "community users" of the land will be able to become owners in the cooperative.

**Earth Bridge Community Land Trust.** EBCLT owns about 400 acres on 7 parcels in Vermont and New Hampshire. As landlord, EBCLT has long-term ground leases with farmers and non-farming residents. Fair Winds Farm and Wild Carrot Farm share a leased EBCLT parcel and other resources as part of a farm succession plan.

## RESOURCES

**NOTE:** *There are many resources about farmland access, buying and leasing land, farm business structures and related topics. Here are a few:*

- ***Farm Seeker Toolbox* (Land For Good).** Contains guides, worksheets, fact sheets, checklists, decision tools, an online tutorial and an online build-a-lease tool, all focused on accessing farmland. See also Leasing Farmland Toolbox. landforgood.org/resources/toolbox/toolbox-farm-seekers
- ***Cooperative Farming: Frameworks for Farming Together* (Greenhorns).** A guide about all aspects of farming as a group, greenhorns.org/wp-content/uploads/2018/07/Greenhorns_Cooperative_Farming_Guidebook.pdf
- ***Land Access & Use* (Legal Food Hub):** several written guides on buying a farm and on negotiating a lease. legalfoodhub.org/resource-library/land-access-use
- ***Farmer's Guide to Business Structures* (Farm Commons).** Also related information on insurance and liability, land purchasing and land leasing. farmcommons.org/library
- ***Finding Farmland Course* (National Young Farmers Coalition).** Nine online lessons on the basics. Links to an online calculator tool to generate land purchase scenarios. youngfarmers.org/finding-farmland-course
- ***Finding, Assessing and Securing Farmland* (New Entry Sustainable Farming Project).** A plain language guide. nesfp.org/resources/plain-language-guide-finding-assessing-and-securing-farmland-ma
- ***Agrarian Commons* (Agrarian Trust).** A land ownership model based on community land trust principles. agrariantrust.org/initiatives/agrarian-commons
- ***Preserving Farms for Farmers* (Equity Trust).** Resources and technical assistance focused on ground leases, specialized agricultural easements and other "alternative approaches" to land tenure. equitytrust.org/farms-for-farmers
- ***Rural Cooperative Development Centers*.** USDA-funded assistance for every state. rd.usda.gov/files/RD-CoopDevelopmentCenters.pdf

# APPENDIX: SELECTED LEGAL CONSIDERATIONS

**This Appendix addresses certain legal issues related to the methods in the guide.** Specifically, it looks at: (1) liability, (2) entry/exit concerns; and (3) other risks. This is not an exhaustive list; there may be other risks and legal considerations. Also, this is general information and not state-specific. As state law varies widely from state to state, it is recommended that farmers consult individual state law. Lastly, this is an overview of some legal risks possible under the methods in this guide and does not constitute legal advice in any manner.

## Method 1: Individual farmers own the property

One-Farm Group

**Liability**

1. Owners are personally liable for any act or occurrence on or associated with the real property. This can be very risky to owners of actively farmed property as there is potential for personal injury claims from employees, customers, delivery people etc.
2. If there is a mortgage on the real property, all owners who sign that mortgage deed are jointly and severally liable for the repayment of the loan. This means if one of the signatories stops paying, the others are still individually on the hook for that delinquent owner's share. If the remaining owners are unable to cover payment for that delinquent owner, the loan will go into default and possible foreclosure.
3. If a co-owner has a third-party creditor who obtains a judgment against him or her, that creditor can force the sale of the real property when seeking damages. Third party creditors can be wholly unrelated to the farm business, e.g., the ex-spouse of a co-owner in a divorce action, or a personal injury claim involving a co-owner.

**Exit Strategy**

1. An owner of real property must release their interests in said property in writing. If said person refuses, court action needs to be taken to resolve the issue. A court may partition the property or order a buyout. This is a costly and lengthy process.
2. If the property is sold, the nature of the transfer could trigger property tax penalties for the individuals if the farm property was under an agricultural property tax reduction program.

**Other risks**

One big decision is on how to hold title to the property. Joint ownership of real property can be held as joint tenancy or as tenants in common. (Tenants in common and joint tenancy are legal terms that don't have anything to do with being a tenant.) In the instance of joint tenancy, you hold the property together with rights of survivorship. This means when one owner dies, the other remaining owners take the decedent's share. This works in a family situation, but not usually in a business relationship. Under tenants in common, when an owner dies, his or her share passes according to the terms of his or her will or by the laws of intestacy if he or she has no will. The risk of this to the co-owners is that person who inherits the decedent's share of the real property may not share the same goals as the remaining co-owners, forcing the exit challenge discussed above. Note, in certain states, when a deed is silent on the nature of ownership, tenants in common is the default. For these and other reasons, this is not a recommended method.

*Continued >*

## APPENDIX: SELECTED LEGAL CONSIDERATIONS

One-Farm Group

### Method 2: Farmer-member real estate entity owns the property

**Liability**

1. Personal liability is significantly reduced by way of ownership through an entity like an LLC. There are state-specific exclusions to this liability protection. For example, intentional acts that are fraudulent, illegal, or reckless, and result in damage to the company or someone else are not shielded from liability in most states.
2. It is important to exercise caution to keep the entity that owns the real estate as a separate entity. Avoid commingling personal and farm business assets with the real estate assets. That said, plaintiffs will sue anyone and everyone potentially involved, including an LLC likely to be shielded from liability. So owners could still be subject to the costs of litigation.
3. More protection from judgment creditors. Creditors may still be able to put a lien on the real property, but they are not likely able to force the sale of the property.

**Exit Strategy**

1. Before buying real property through a multi-member LLC or cooperative entity, be sure an exit strategy is spelled out in the operating agreement that specifically provides for the method of buyout/sale in the event a member wants to leave.
2. If a member is leaving the real estate-owning entity, be conscious of default terms under any loans associated with the property. Some lenders consider a change of LLC membership something that requires lender approval first, and some consider it an automatic default on the loan.
3. The nature of the transfer could trigger property tax penalties if the farm property was under a state's preferential tax program. In some instances, under such tax schemes, if the property is transferred out of agricultural uses before the expiration of a certain time period, there is a recapture charge for the deferred tax due from the seller at the time of closing.

**Other risks**

A lender will likely require the members of the entity purchasing real estate to personally guaranty the mortgage, i.e., each member is individually liable for mortgage payments. If another member of the entity stop paying their share, the remaining member(s) are likely personally liable for the loan in its entirely.

*Continued >*

## APPENDIX: SELECTED LEGAL CONSIDERATIONS

### Method 3: One Farm, One Lease

One-Farm Group

**Liability**

1. The tenant is the farmers' business entity. That entity is liable under the terms of the lease. Depending on the type of entity (e.g., LLC) and agreement, individual farmers could be liable for the actions of other farmers in the entity. Make sure the entity's lease with the landlord addresses liability for both parties.

**Entrance/Exit Strategy**

1. An individual farmer exiting from the farm business entity could jeopardize the entity's ability to meet the terms of the lease. For example, a farm business may not perform as viably and not be able to meet the costs and other terms of the lease.
2. Likewise, adding new members to the business could change the farm's performance and affect the lease.
3. The lease is valid only with the farm business entity as the tenant, unless the lease allows the tenant to assign its rights to another party. That means that if the entity dissolves, the individual farmers would not have any standing as tenants.

**Other risks.**

It is advised to obtain renters insurance on the property.

### Method 4: Real Estate Entity, with farm businesses as members, owns the property

Intentional Group

**Liability**

1. Personal liability is significantly reduced through ownership by an entity like an LLC. There are state-specific exclusions to this liability protection. For example, intentional acts that are fraudulent, illegal, or reckless, and result in damage to the company or someone else are not shielded from liability in most states.

**Entry/Exit Strategy**

1. It is very important to tailor the operating agreement for the real estate LLC to address the unique issues posed by this form of ownership. For example, if the only members of the real estate LLC are other LLCs, who controls management of the real estate LLC? Who speaks for each LLC member?
2. The operating agreement should also spell out a targeted dissolution plan or buyout plan so there is a clear exit strategy.

*Continued >*

## APPENDIX: SELECTED LEGAL CONSIDERATIONS

Intentional Group

### Method 5: Separate Leases

**Liability**

1. If each farm has a separate lease, there is no risk of joint and several liability, meaning each tenant is not liable for the acts or inactions of other tenants.
2. However, each farm with a separate lease is liable for acts/personal injury/property damage on the property they are leasing.
3. Who signs the lease? It is important that a person not sign a lease as an individual, but rather as a member of an LLC or other business entity. (A sole proprietorship/DBA doesn't offer protection.) This will give some protections from liability associated with the lease, such as if someone slips and falls on the property. It's important to note that an LLC does not shield from all liability. Some landlords will insist that an individual personally guarantee the lease.
4. The lease must specifically define the leased property. There should be no ambiguity about the portion of the property each tenant is leasing.

**Entry/Exit Strategy**

1. A provision in the lease could allow subleasing or assigning the property should a farmer-tenant decide to exit or want someone else use a portion of the leasehold. Remember, if they default or cause damage, the tenant is responsible because the lease is still in their name. In such a provision, the landlord may retain rights to approve the choice of subtenant or assign.

**Other risks**

It might be trickier to get a landlord to agree to multiple leases for one property. Multiple leases make it harder for the landlord to enforce. (See Method #6.)

*Continued >*

# APPENDIX: SELECTED LEGAL CONSIDERATIONS

Intentional Group

## Method 6: Farmer entity master tenant with subleases

*This scenario assumes that the subtenants are all members of the entity that is the master tenant.*

**Liability**

1. In this situation, the master tenant entity (made up of a group of farmers or farm businesses) that is renting the property is liable for rent and damages any other costs, and compliance with terms and conditions under the lease. Individual liability would depend on the type of entity and the nature of the operating or incorporating agreement. But broadly speaking, there are generally more liability protections for individuals acting through a business entity other than a sole proprietorship.
2. Individual subtenants don't sign the master lease so they are unlikely to have liability under that lease. However, they are still subject to liability associated with their use of their subleased property.
3. All members of the master tenant entity are jointly/severally liability for personal injury or property damage claims occurring on or about the property.
4. The individual subtenant farm businesses are liable for any violations under the terms of their sublease. Individual subtenant farm businesses could also be liable for personal injury actions, property damage or other lawsuits associated with the property being used by the subtenant.
5. An individual subtenant may put the master lease (and therefore all subleases) at risk if they violate the terms of their lease. For example, if one subtenant cuts down a tree in violation of their sublease and also the master lease, the landlord could declare a default on the master lease.

**Entry/Exit Strategy**

1. The master lease must allow for subleasing. Without that provision, subleasing would be in violation under the lease and the subtenant could be evicted for having no rights to possession.
2. If an individual subtenant wishes to leave, they must terminate their sublease AND obey the terms for exit that are spelled out in the master tenant operating agreement. A new subtenant could lease from the master tenant without being a member of the master tenant entity. Or a new farmer could join the entity.

**Other risks**

Risk to subtenants: In this case, as a member of the master tenant entity, each subtenant also has power and responsibility regarding the terms of the lease and the accountability of all subtenants. Each individual subtenant is not responsible for the actions of fellow subtenants except to the extent that they are also the master tenant.

If the master tenant entity defaults and the lease is terminated, each subtenant's lease is also terminated, even if they did not violate the terms of their sublease.

Make clear how costs of utilities, insurance and other costs are divided between the master tenant and subtenants. It's also important to clearly identify which portions of the leased property each subtenant is allowed to use (their sub-leasehold.

*Continued >*

# APPENDIX: SELECTED LEGAL CONSIDERATIONS

Situational Group

## Method 7: Separate Leases

*Similar to Method 5*

## Method 8: Master Tenant with subleases

***In this scenario the master tenant is not an entity formed by the subtenants. Is a separate entity. Note that subtenants might have a license instead of a lease.***

**Liability**

1. In this situation the entity that is renting the property is liable for rent and damages any other costs, and compliance with terms and conditions under the lease. If that organization defaults, all subtenants' leases will be at risk.
2. Individual subtenants don't sign the master lease so they are unlikely to have any liability under that lease.
3. The individual subtenants are liable for any violations under the terms of their sublease. Individual subtenant farm businesses could also be liable for personal injury actions, property damage or other lawsuits associated with the property being used by the subtenant.
4. An individual subtenant may put the master lease (and therefore all subleases) at risk if they violate the terms of their lease. For example, if one subtenant cuts down a tree in violation of their sublease and also the master lease, the landlord could declare a default on the master lease.

**Entry/Exit Strategy**

1. The master tenant must exercise due diligence in selecting subtenants. Current subtenants may or may not have a say in choosing new subtenants. Do they have input into the selection criteria?
2. Make clear how costs of utilities, insurance and other costs are divided between the master tenant and subtenants. It is also important to clearly identify which portions of the property each subtenant is allowed to use.
3. If subtenants leave and are not replaced, the master tenant may have trouble meeting the terms of its lease, thereby jeopardizing remaining subtenants.

**Other risks**

Since a subtenant is not a party to the original lease, they have no rights if the master tenant defaults. It is important for subtenants to understand the terms of the primary lease; if the tenant doesn't want to renew the lease at the end of the term, the subtenant is out of the lease too.

Informal agreements with "sub-users" of a leased property create multiple risks regarding liability and default of the master lease.

*Continued >*

## APPENDIX: SELECTED LEGAL CONSIDERATIONS

Mixed Group

### Method 9: Mixed owners and tenants

*Similar to Method 6*

### Method 10: Mixed farmers and non-farmers

*See various methods, above.*

*Contributions from Attorney Ailla Wasstrom-Evans, The Prue Law Group, P.C., 2022*

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