

Land Access Bootcamp

Table of Contents

Table of Contents	1
Course agenda	2
LFG Decision Tree	3
My Dream Farm exercise	4
Financial Balance Sheet.	5
Jaffe's Farm Scenarios spreadsheets	7
FSA Direct Farm Ownership Loans	9
Farm Credit.	11
Farm Search worksheet	12
Necessary, Desirable, Optional worksheet	16
Land Assessment Checklist	17
Elements of a Good Farm Lease	21
Lease-to-Own fact sheet	23
Multi-Year Lease Template	30
Business Life Cycle Transition Planning	34

Land Access Seminar Agenda

Saturday, February 9, 2019

10 a.m. Welcome Introductions & Review Agenda
Exercise: My Dream Farm

10:45 a.m. Land Tenure Basics
Story: Humble Pie Farm
Exercise: Financial Balance Sheet

11:45 a.m. Financial Readiness and Resources

12:30 p.m. Lunch

1:15 p.m. Evaluating properties
Exercise: Necessary, Desirable, Optional

2:15 p.m. Lease basics
Story: Wild Woods Farm

3:00 p.m. Break

3:15 p.m. Life Cycle Transition

3:30 p.m. Client Stories

4:15 p.m. Working with Clients: The Process

5:30 p.m. Wrap-up and Evaluations



Land Access Methods

This decision tool organizes the common and less common farmland access methods that you might consider on your path to secure land tenure into three basic categories. The essential variables for each are: the division of interests (rights) in the property; the legal instruments and arrangements; and the parties to the agreement. Most traditional and innovative land tenure arrangements will fit into one of these three categories. This tool provides a way to organize your thinking, compare land access methods, and make informed decisions.

For more details, see our resources online at LandForGood.org on the Farm Seekers page under Toolbox.

WHAT IS MY GOAL FOR ACCESSING MY FARMLAND?

I want to own a farm now
(OWNERSHIP)

I want to own a farm in the future
(PATH TO OWNERSHIP)

I want to rent a farm
(TENANCY)

WHICH ARRANGEMENTS MIGHT WORK FOR ME?

WHICH ARRANGEMENTS MIGHT WORK FOR ME?			
Sole Ownership		Whole Shared Ownership Interests	Partial Ownership Interests
<p>Farmer acquires title to land; known as Fee Simple</p> <ul style="list-style-type: none"> ▶ Outright Cash Purchase ▶ Financed purchase with conventional or alternative financing ▶ Seller-financed ▶ Gift from a family member or other ▶ Inheritance from a family member or other 		<p>A group of farmers, or farmers with non-farmers, forms a legal entity to own the farmland. Farmers run individual or joint operations on land rented from the entity</p> <ul style="list-style-type: none"> ▶ Cooperative ▶ LLC ▶ Corporation 	<p>Farmer and other entities own different interests or rights in the land</p> <ul style="list-style-type: none"> ▶ Ground lease where entity owns land; farmer owns structures and rents land ▶ Life estate where non-farmer retains rights to occupy ▶ Easement where entity holds: <ul style="list-style-type: none"> ▶ Development rights ▶ Other easement
Path-to-Ownership Options		No Interests (Rights) in Land	Leasehold Interest in Land
<p>Farmer purchases a specific farm over time</p> <ul style="list-style-type: none"> ▶ Lease-to-own with right of first refusal or purchase option ▶ Land contract (aka installment sale) where farmer pays landowner toward purchase ▶ LLC, coop or corporation within which equity in the land is gradually transferred to the farmer ▶ Gift of land over time 		<p>Farmer has agreement granting permission to use the land (technically not a tenant)</p> <ul style="list-style-type: none"> ▶ License ▶ Permit ▶ Memorandum of Agreement 	<p>Farmer (tenant) has a contractual agreement assigning use rights and responsibilities; may be written or oral</p> <ul style="list-style-type: none"> ▶ Short-term lease ▶ Long-term lease ▶ Ground Lease where entity owns land; farmer owns structures and rents land
WHO MIGHT BE INVOLVED?			
<ul style="list-style-type: none"> ▶ Private bank ▶ State/Federal lender ▶ Seller-financer ▶ Community/Alternative lender ▶ Family/trust ▶ Employer ▶ Other private landowner 	<ul style="list-style-type: none"> ▶ Other farmers ▶ Community members ▶ Investors ▶ Family members 	<ul style="list-style-type: none"> ▶ Private landowner(s) (individual, family or group) ▶ Public/Gov't entity ▶ Non-profit ▶ Other landholding entity 	<ul style="list-style-type: none"> ▶ Private landowner(s) (individual, family or group) ▶ Public/Gov't entity ▶ Non-profit (e.g., land trust, school) ▶ Investors ▶ Retired farmer



Gaining ground for farmers

MY DREAM FARM

1. What are the natural and built features of your dream farm?

2. What is your operation?

3. What is your tenure relationship?

Balance Sheet 1/1/2018

Dream Farm

Current Assets	Value	Current Liabilities
Cash & Equivalents		Current Term Debt
Prepaid Ex. & Supplies		
Other Current Assets		
Total Current Assets		Total Current Liabilities
Intermediate Assets		Intermediate Liabilities
Machinery & Equipment		
Farm Vehicles		
Other		
Total Intermediate Assets		Total Intermediate Liabilities
Long Term Assets		Long Term Liabilities
Real Estate - Land		Long Term Debt
Total Long Term Assets		Total Long Term Liabilities
Total Farm Assets		Total Farm Liability
		Total Farm Equity
Personal		Current Liabilities
Current Assets		Credit cards
Cash and Equivalents		
Stocks and Bonds		
Cash Value Life Ins		
Total Current Assets		Total Current Liabilities
Intermediate Assets		Intermediate Liabilities
Household goods		
Cars		
Total Intermediate Assets		Total Intermediate Liabilities
Long Term Assets		Long Term Liabilities
Retirement		Student loans
		Car loan
Total Long Term Assets		Total Non current Liabilities
Total Personal Assets		Total Personal Liabilities
		Total Personal Equity
		Grand Total Equity



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Entity			
ASSETS	1/1/17	1/1/18	1/1/19
Checking/Savings			
Account Receivable			
Inventory			
Other			
Total Current Assets			
Machinery and Equipment			
Vehicles			
Retirement Accounts			
Other			
Total Intermediate Assets			
Home			
Land			
Buildings and Improvements			
Other			
Total Long Term Assets			
TOTAL ASSETS			
LIABILITIES			
Credit Card			
Account Payable			
Current Portion of Long-Term Debt			
Other			
Total Current Liabilities			
Working Capital			
Machinery and Equipment Loan			
Vehicle Loan			
Student Loan			
Other			
Total Intermediate Liabilities			
Mortgage Compeer Financial			
Bank			
Other			
Total Long Term Liabilities			
TOTAL LIABILITIES			
NET WORTH			
% Equity			

Crop Farm - Case Study

Scenarios

<u>Income/Expense</u>	<u>W/ Develop Rights</u>	<u>W/O Develop Rights</u>	<u>Leased Only</u>
<i>Total Farm Income</i>	\$ 330,000	\$ 330,000	\$ 330,000
<i>Advertising</i>	\$ 2,000	\$ 2,000	\$ 2,000
<i>Car and Truck Expenses</i>	\$ 3,000	\$ 3,000	\$ 3,000
<i>Chemical Expenses</i>	\$ 6,000	\$ 6,000	\$ 6,000
<i>Custom Hire</i>	\$ 3,000	\$ 3,000	\$ 3,000
<i>Depreciation/Cap Replace</i>	\$ 20,000	\$ 20,000	\$ 10,000
<i>Fertilizer and Lime</i>	\$ 22,000	\$ 22,000	\$ 22,000
<i>Freight and Trucking</i>	\$ 2,500	\$ 2,500	\$ 2,500
<i>Gas, Fuel and Oil</i>	\$ 26,000	\$ 26,000	\$ 26,000
<i>Insurance Expense</i>	\$ 8,500	\$ 8,500	\$ 8,500
<i>Interest Expense</i>	\$ 25,000	\$ 12,500	\$ -
<i>Labor Expense</i>	\$ 76,000	\$ 76,000	\$ 76,000
<i>Misc Exp</i>	\$ 3,000	\$ 3,000	\$ 3,000
<i>Office Expense</i>	\$ 1,000	\$ 1,000	\$ 1,000
<i>Professional Fees</i>	\$ 1,500	\$ 1,500	\$ 1,500
<i>Rent Expense</i>	\$ 3,000	\$ 3,000	\$ 21,000
<i>Repairs</i>	\$ 7,000	\$ 7,000	\$ 7,000
<i>Seeds and Plants</i>	\$ 16,000	\$ 16,000	\$ 16,000
<i>Supplies</i>	\$ 56,000	\$ 56,000	\$ 56,000
<i>Taxes</i>	\$ 9,000	\$ 9,000	\$ 1,500
<i>Utilities</i>	\$ 7,000	\$ 7,000	\$ 7,000
<i>Total Expenses</i>	\$ 297,500	\$ 285,000	\$ 273,000
<i>Net Income</i>	\$ 32,500	\$ 45,000	\$ 57,000
<i>Less Principal Payments</i>	\$ (25,000)	\$ (12,500)	\$ -
<i>Less Residence Rental</i>	\$ -	\$ -	\$ (12,000)
<i>Net for Family Living</i>	\$ 7,500	\$ 32,500	\$ 45,000

Farm Fruit Farm - Case Study

<u>Scenarios</u>			
<u>Income/Expense</u>	<u>W/ Develop Rights</u>	<u>W/O Develop Rights</u>	<u>Leased Only</u>
<i>Sale of Resale Product</i>	\$ 37,000	\$ 37,000	\$ 37,000
<i>Cost of Resale Products</i>	\$ (19,000)	\$ (19,000)	\$ (19,000)
<i>Sale of Raised Products</i>	\$ 172,000	\$ 172,000	\$ 172,000
<i>Cooperative Distributions</i>	\$ 1,000	\$ 1,000	\$ 1,000
<i>Ag Program Payments</i>	\$ 1,500	\$ 1,500	\$ 1,500
<i>Custom Hire Income</i>	\$ 2,000	\$ 2,000	\$ 2,000
<i>Other Income</i>	\$ 2,500	\$ 2,500	\$ 2,500
<i>Total Farm Income</i>	\$ 197,000	\$ 197,000	\$ 197,000
<i>Advertising</i>	\$ 3,500	\$ 3,500	\$ 3,500
<i>Car and Truck Expenses</i>	\$ 4,500	\$ 4,500	\$ 4,500
<i>Chemical Expenses</i>	\$ 8,000	\$ 8,000	\$ 8,000
<i>Custom Hire</i>	\$ 2,000	\$ 2,000	\$ 2,000
<i>Depreciation/Cap Replace</i>	\$ 16,000	\$ 16,000	\$ 6,000
<i>Fertilizer and Lime</i>	\$ 12,000	\$ 12,000	\$ 12,000
<i>Freight and Trucking</i>	\$ 1,000	\$ 1,000	\$ 1,000
<i>Gas, Fuel and Oil</i>	\$ 6,000	\$ 6,000	\$ 6,000
<i>Insurance Expense</i>	\$ 6,500	\$ 6,500	\$ 6,500
<i>Interest Expense</i>	\$ 25,000	\$ 12,500	\$ -
<i>Labor Expense</i>	\$ 36,000	\$ 36,000	\$ 36,000
<i>Misc Exp</i>	\$ 2,500	\$ 2,500	\$ 2,500
<i>Office Expense</i>	\$ 1,500	\$ 1,500	\$ 1,500
<i>Professional Fees</i>	\$ 2,000	\$ 2,000	\$ 2,000
<i>Rent Expense</i>	\$ 4,500	\$ 4,500	\$ 22,500
<i>Repairs</i>	\$ 5,500	\$ 5,500	\$ 5,500
<i>Seeds and Plants</i>	\$ 2,000	\$ 2,000	\$ 2,000
<i>Supplies</i>	\$ 14,500	\$ 14,500	\$ 14,500
<i>Taxes</i>	\$ 8,500	\$ 8,500	\$ 1,000
<i>Utilities</i>	\$ 3,000	\$ 3,000	\$ 3,000
<i>Total Expenses</i>	\$ 164,500	\$ 152,000	\$ 140,000
<i>Net Income</i>	\$ 32,500	\$ 45,000	\$ 57,000
<i>Less Principal Payments</i>	\$ (25,000)	\$ (12,500)	\$ -
<i>Less Residence Rental</i>	\$ -	\$ -	\$ (12,000)
<i>Net for Family Living</i>	\$ 7,500	\$ 32,500	\$ 45,000

FSA Direct Farm Ownership Loans

- Regular: financed by FSA alone for purchase price under \$300,000
- Joint Financing: financed with FSA and Bank for purchase price over \$300,000
- Down payment: depending upon individual needs

Application Forms*	
FSA-2001, Request for Direct Loan Assistance	Instructions
FSA-2002, Three-Year Financial History	Instructions
FSA-2003, Three-Year Production History	Instructions
FSA-2004, Authorization to Release Information	Instructions
FSA-2005, Creditor List	Instructions
FSA-2006, Property Owned and Leased	Instructions
FSA-2037, Farm Business Plan Worksheet Balance Sheet	Instructions
FSA-2038, Farm Business Plan Worksheet Projected / Actual Income and Expense	Instructions
FSA-2302, Description of Farm Training and Experience	Instructions

Buying with an FSA Loan

- Part 1: What can you afford?
- Part 2: Wait and prepare
- Part 3: The mechanics of the loans

Part 1: What can you afford?

- Understand your farm and personal finances
Fill out the specific FSA forms or at least start by:
 - Creating a historical (gross and net) income statement
 - Creating a projected statement for upcoming season
 - Knowing your personal living expenses and other costs
- Find your local FSA office and set up a meeting
- Ask to talk about **DIRECT FARM OWNERSHIP LOANS**
- Determine with your FSA agent an approximate purchase price you could afford based on your financials

Part 2: Wait and Prepare

FSA: Prepare the application materials but wait to submit until a specific property comes up for sale or auction (once submitted and approved the guarantee only lasts 45 days)

BANK: While waiting for a property to come up for sale, also start meeting with a banker if you plan to go over the 300k direct purchase price limit from FSA

Part 3: The mechanics of the loans

If borrowing less than \$300,000

- FSA will be the only lender for the loan
- FSA cannot release the funds in time for purchase from auction
- FSA will guarantee funds will come but will work with a bank to give you a bridge loan if needed for the waiting period (45 days is typical but can drag on if federal budgets aren't in place (ex in 2009 it took 2 years))
- **YOU CAN use an FSA loan when buying at auction! The bridge loan enables this.**

If borrowing more than \$300,000

- FSA will loan a portion and a bank will loan a portion
- Borrower is responsible for applying for the loan with the bank
- FSA will be in contact with banker after borrower initiates contact and will ask for the bridge loan needed
- There will be two loans from the bank, 1 is a bridge loan, 1 is the main loan.
- Develop a relationship with your banker after getting your finances in order. After talking to the FSA agent then go to the bank and tell them your plan to work with FSA and show all financials.



United States Department of Agriculture
Farm Service Agency

Farm Loan Programs Information Chart

Type of Loan	Maximum Loan Amount	Rates and Terms
Direct Farm Ownership	\$300,000	<ul style="list-style-type: none"> Term: Up to 40 years Interest rate: fixed**
Direct Down Payment	The lowest of the following: <ul style="list-style-type: none"> 45% of the farm or ranch purchase price 45% of the appraised value \$225,000 	<ul style="list-style-type: none"> Term: Up to 20 years Interest rate: fixed**
Direct Operating	\$300,000	<ul style="list-style-type: none"> Term: 1 to 7 years Interest rate: fixed**
Direct Emergency	The lowest of the following: <ul style="list-style-type: none"> 100% actual or physical losses \$500,000 	<ul style="list-style-type: none"> Term: 1 to 7 years (possibly up to 20 years) for non-real estate purposes Up to 40 years for physical losses on real estate Interest rate: fixed**
Guaranteed Farm Ownership	The maximum loan amount is adjusted annually for inflation*	<ul style="list-style-type: none"> Term: Up to 40 years The interest rate is negotiated by you and your lender.
Guaranteed Operating	The maximum loan amount is adjusted annually for inflation*	<ul style="list-style-type: none"> Term: 1 to 7 years The interest rate is negotiated by you and your lender.
Guaranteed Conservation	The maximum loan amount is adjusted annually for inflation*	<ul style="list-style-type: none"> Term: Up to 20 years The interest rate is negotiated by you and your lender.

Farm Credit offers a variety of rural loans and related services to keep agriculture and rural America growing.

We offer:

- Short-, intermediate- and long-term ag loans
- Operating lines of credit
- Leases
- Participations and syndications for large capital needs
- Rural home loans
- Land loans

We finance:

- Equipment
- Facilities
- Inputs
- Real estate and land
- Processing equipment
- Livestock

We provide:

- Real estate appraisals
- Crop insurance
- Cash management services
- Industry sector benchmarking and reports

Services may vary by location. Contact your local Farm Credit office for more information.

<https://www.farmcreditnetwork.com/about/overview/products-and-services>



FarmSearch® Worksheet

This worksheet will guide your farm search process and help you decide your next steps. Working in the order given is an effective way to proceed.

Some tips as you start or continue your search:

- **Create a timeline** you can manage and stick to it.
- **Be prepared** for the questions landowners will ask.
- **Promote yourself** with a short written personal/business statement.
- **Be flexible** matching the land to your plan.

1. Personal network: For example, family, friends, CSA members, fellow farmers.

Completed so far: _____

Next steps: _____

2. Farm linking programs: Check your state and region for farm link programs and sign up. Some programs maintain lists of farm seekers. Others post only properties.

Completed so far: _____

Next steps: _____

- 3. Land trusts, conservation buyers and investors:** Investigate local, state, and regional land trusts. Some own farmable properties or hold easements. Conservation buyers are interested in land protection and stewardship. They might partner with land trusts or you on secure leases or ownership options. Some investor entities have social goals to make land available and affordable, and/or to promote sustainable practices. They may acquire land and offer it under lease or lease-to-own arrangements.

Completed so far: _____

Next steps: _____

- 4. Real estate agents:** Real estate “agents for the seller” work for the seller. Real estate “agents for the buyer” work for the buyer. Some are more interested in farms than others.

Completed so far: _____

Next steps: _____

- 5. Agricultural incubators:** These organizations offer rental land and may help graduates find land.

Completed so far: _____

Next steps: _____

- 6. Public land and local commissions:** Some states and municipalities rent (or want to rent) farmland. Local commissions often know about available agricultural parcels. They may manage farmable open space and have procedures to solicit farming tenants.

Completed so far: _____

Next steps: _____

- 7. Farm service providers:** County Conservation Districts, Extension educators, USDA Natural Resources Conservation Service and Farm Service Agency personnel, and state departments of agriculture have programs related to land acquisition (e.g., loans, easement programs, technical assistance), outreach vehicles such as newsletters, and networks of farmers.

Completed so far: _____

Next steps: _____

- 8. Support organizations:** Most states have many farm support organizations, from Farm Bureau to organic education groups to buy local advocacy networks. Make a list!

Completed so far: _____

Next steps: _____

- 9. Institutions and religious entities:** Colleges and universities, churches, retreat facilities, convents and seminaries often have considerable land holdings. Some are interested in agriculture and land stewardship and make land available to farmers.

Completed so far: _____

Next steps: _____

10. Your farming network: Auctioneers, farm suppliers, veterinarians, crop consultants, custom operators, lenders... think widely!

Completed so far: _____

Next steps: _____

Some Other Strategies:

Mapping: Identify open land; note current uses. Evaluate soils, topography, water etc. Find out what you can about the property. Based on this “homework” you might contact the landowner.

Partnering: Partner with other farm seekers, particularly if a large property is under consideration.

“Windshield” Survey: Drive around desirable areas to look for parcels that might work for your operation. Follow up with research, ask questions, and make contacts. See what unfolds!

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United States
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Agriculture

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Agriculture



Finding Your Farm

NECESSARY, DESIRABLE, OPTIONAL WORKSHEET

This worksheet will help you identify and sort priorities among all the factors you are considering in your farm search. For each category on the left, list what's necessary, desirable or optional. For example, is it necessary to own your land? Does the property have to be in a certain location? Must you live on-site, or is living nearby an option? Do you need a barn or could you do without?

	Necessary	Desirable	Optional
Tenure (own? lease?)			
Location			
Natural features			
Built features			
Housing			
Community			
Other			

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FARM RENTAL ASSESSMENT CHECKLIST

Just as in a farm purchase, your approach to leasing a farm or farmland should involve careful examination of the site conditions and variables that may affect the viability of your farm operation.

This checklist is meant to be used as a guide as you examine prospective farm properties for lease. BEFORE visiting farm properties for lease, carefully review each consideration. Identify any particular aspects vital to your operation. NEXT, as you visit a particular property, check the boxes on the left to confirm that you have considered each item. Note comments on the right to help remember unique observations, next steps and/or questions. You may want to bring an extra sheet of paper to help keep your notes organized. By carefully scrutinizing all of the items listed, you may be able to better evaluate the suitability of each property for your farm operation and identify any “deal breakers.”

Information on developing working landlord-tenant relationships and crafting lease agreements can be found in the Resources section on page 4.

CONSIDERATION

COMMENTS OR SITE VISIT NOTES

- ☐ **Access**
- ☐ **Ag Support Services**
- ☐ **Cell Phone Reception**
- ☐ **Current Tenant Relations**
- ☐ **Easements**
- ☐ **Equipment Storage**
- ☐ **Equipment Usage**
- ☐ **Housing / Residence**
- ☐ **Infrastructure Usage, Improvements & Maintenance**
 - ☐ Barns
 - ☐ Equipment sheds
 - ☐ Farm office
 - ☐ Farm stands
 - ☐ Feed storage facilities
 - ☐ Fencing
 - ☐ Food processing facilities
 - ☐ Greenhouses
 - ☐ Irrigation, well, watering systems
 - ☐ Mobile livestock units
 - ☐ Product storage facilities, coolers, freezers
- ☐ **Land Orientation**
- ☐ **Livestock**
- ☐ **Microclimates**
- ☐ **Neighbor Relations**
- ☐ **Power Supply**
- ☐ **Property Borders**
- ☐ **Roads**
- ☐ **Records**
- ☐ **Restrictions/Restricted Areas**
- ☐ **Soils**
- ☐ **Topography**
- ☐ **Vegetation**
- ☐ **Water Resources**
- ☐ **Other Considerations**

ACCESS — How will you access the property? Check to see that roads leading to the property are traversable or adequately maintained, plowed, etc. for when you will need to make regular visits or transport goods to market. Does the site have adequate entry and exit for all equipment in every season and time of day during which you will be farming? See that the site has adequate access and turnaround space for large trucks delivering bulk supplies (or that a suitable alternate spot exists nearby). Each field or area on the property should have adequate entry and exit ways for regular equipment traffic. If individual fields, paddocks or areas have not previously seen the regular entry or exit of heavy equipment, farm vehicles, livestock or customers, consider the impact of such traffic on access ways and discuss with the landlord potential improvements to stabilize access ways, such as laying gravel.

AG SUPPORT SERVICES — Take note of how far hardware stores, feed suppliers, mechanics, custom hire equipment operators, or other support businesses or services are from the proposed site. Consider how much time you will spend traveling back and forth from each of these, or what other travel/shipping costs might be incurred.

CELL PHONE RECEPTION — Check to see that your phone service carrier provides cell phone reception at the site (or in a nearby location) for making and receiving calls.

CURRENT TENANT RELATIONS — Inform yourself about any current or previous tenants. Ask the landlord if the current tenant is aware that the landlord is looking for a new tenant and see if it is possible to speak to the tenant. Conversations with previous tenants can be invaluable, as they can reveal strengths, challenges or special features about a property that might otherwise be unknown, even to the landowner! Current or previous tenants might also share records that can be valuable sources of information (see “RECORDS,” below) or be willing to work alongside you in the fall or spring to help you get to know the new parcel. Note any particular expectations and/or desires the landlord currently has with regard to the property (in terms of aesthetics, farming approaches, etc.). Be sensitive that current or previous tenants are not required to meet with you and might be going out of their way to provide you information.

EASEMENTS — Become aware of restrictions placed on the property, including conservation easements, rights of way, and to what extent these restrictions could impact farm operations or limit expansion. For example, find out the width of a right-of-way zone that the power company owns for power, also what rights these entities have for access, management, etc. (i.e. spraying herbicides under powerlines...) or the distance from the state highway into the property that the state owns.

EQUIPMENT STORAGE — Identify and inspect locations for storing your equipment. Ask questions. Discuss terms.

EQUIPMENT USAGE — Some landowners may be willing to include some equipment in the lease for your use. If so, identify and inspect the equipment, discuss terms, including fees, maintenance schedules, time restrictions and the rights of any other users. Alternatively, landowners may be interested in being hired by you to perform custom work with their equipment (i.e. plowing, hay harvest, etc.) Consider all options.

HOUSING — Identify all buildings that could be used as residences, or consider all areas that could be used for building sites or for siting mobile housing. If an existing residence is to be included in the lease or a separate residential lease is to be crafted, both parties should be aware of the basic rights and responsibilities afforded to landlords and residential tenants by Vermont State and Federal laws (see “Resources,” page 4).

INFRASTRUCTURE USAGE, IMPROVEMENTS & MAINTENANCE — Identify and inspect any infrastructure on site that could be available to the farm operation, from barns to irrigation lines to coolers. You and the landowner should determine which improvements will be necessary in order for the farm operation to thrive and which improvements you will have the right to make. If you will be investing in improvements, a discussion as to if or how you will be compensated should be initiated. Routine maintenance schedules for all infrastructure to be included in the lease should be discussed. Any anticipated major overhauls or repairs should be identified and distinguished from routine maintenance. Typically you are responsible for all routine maintenance that prevents abnormal deterioration, while the landowner is responsible for all major overhauls, replacements or repairs to structures or other infrastructure. Be sure to consult with builders, irrigation specialists and other experts to get appraisals, quotes and advice on any infrastructure improvements you anticipate needing.

LAND ORIENTATION — Consider the direction and/or quantity of sun available in all areas of the land that will be used. Orientation with regard to wind direction or the existence of windbreaks is also important when considering which crops or livestock will thrive in a given location. If you have concerns, visit the site during different times of day to more carefully evaluate sun and wind exposure. If you have adequate time, a visit during snow cover, following a rain, etc. is desirable.

LIVESTOCK — Any livestock that the landowner owns that is to be housed on site or managed by you should be inspected and the terms of livestock care discussed. If you have questions about animal health, contact a livestock veterinarian or specialist. Consider biosecurity and isolation requirements, as well as the potential for herd or flock contamination. Inspect fencing, and discuss the installation and maintenance of animal fencing and water systems.

MICROCLIMATES — Identify any frost pockets without air drainage, wet areas, high spots exposed to excessive winds, erosion, dry areas, etc. This information can be used in conjunction with macroclimate data or “hardiness zone maps” (see “Resources,” page 4) to assess varieties of crops that could be grown in various locations.

NEIGHBOR RELATIONS — Understand the usage, ownership and perimeters of bordering properties. Ask the landlord if it is possible to have a conversation with bordering landowners or tenants and if they are aware of your intentions to farm. Consider engaging them as you develop your plan, as they may have significant concerns about noise, pollution or aesthetics that may be more easily addressed up front. You do not need the landlord’s approval to talk to neighbors.

POWER SUPPLY — Identify electric service, if needed. Contact the local power company to establish price rates for power or to investigate the feasibility of bringing power to other areas of the site where needed. If it is determined that you will use a generator, identify and discuss proper storage facilities for the generator and its fuel source.

PROPERTY BORDERS — Identify all borders to confirm size of workable lands. Walk borders to determine where sensitive areas exist. For example, agricultural activity would be restricted in proximity to a stream or wetland that acts as a border or intersects a border. If the landowner is not familiar with exact border locations, you can access tax maps that delineate parcels at the local town office.

RECORDS — You should examine any records related to past land use. These include: soil test results, pesticide application records, well or other irrigation water quality testing results, organic certification records, building blueprints, wastewater system design plans and permits, Current Use Program forest and field management plans and any other record that might reveal information pertinent to managing the land for agricultural use. If the landlord has a current tenant, ask to speak to him or her in order to obtain appropriate records. Be sensitive that current or previous tenants are not required to divulge these records and might be going out of their way to provide you information.

RESTRICTIONS/RESTRICTED AREAS — Identify any areas of the property where you will not be permitted to operate. Determine any sensitive areas that require special attention or will be restricted to certain farming practices and discuss those specific restricted practices. Discuss any farming practices or infrastructure modifications that you suspect might raise concern, such as constructing a tool shed or immovable chicken coop or establishing a composting or odor-prone livestock operation in proximity to residences, and propose sites for their implementation. Ask the landlord about hunting grounds, postings and VAST (Vermont Association of Snow Travelers) or ATV trails that exist and are used on the property.

SOILS — A top priority for tenants should be having good soils. Oftentimes, if soils are degraded, even if it is a beautiful spot otherwise, it’s not worth the business expense to sink a lot of money into soil improvement. This is particularly true for a short-term lease situation. Identify soil types (see “Resources,” page 4) and confirm them with site evaluation in each distinct area of the property. Identify problem soils, such as excessively wet or sloped areas. Have the soil fertility evaluated. Discuss cover cropping, soil testing and soil amending responsibilities and schedules with the landlord. If considering farming organically, contact Vermont Organic Farmers, LLC or another appropriate certifying body for information.

TOPOGRAPHY — The land should be flat enough to be tilled or for equipment to be safely operated. This is not so important if grazing livestock. Identify strategies for productively managing non-tillable and excessively sloped areas and discuss whose responsibility it will be to manage those areas.

VEGETATION — Identify strategies for overcoming limitations related to existing tree cover, brush, grasses or weeds, including any existing invasive or vigorous weeds. Identify and point out to the landowner areas where tree removal is necessary. Discuss with the landlord how this work will get done.

WATER RESOURCES — All potential sources of water for farm operations should be identified, including those currently used or those that could be developed (for example, a hillside seep that could be developed into a spring, a river or stream, a well or a hookup to a public utility). Information should be obtained about seasonal fluctuations in water availability and shared or alternative uses of existing or potential water resources. Consult with an irrigation specialist to get a quote on installation is a new water system will need to be purchased.

OTHER CONSIDERATIONS — There are many other considerations not included in this field checklist that need to be made before entering into a lease agreement, such as your landlord’s expectations about insurance, access, lease term, long term ownership and land stewardship. ***Please consult “Resources” (page 4) for additional guidance in crafting a full lease agreement.***

RESOURCES

For Learning More About a Specific Property

SOIL SURVEYS — Soil surveys are a wealth of information. The USDA Natural Resource Conservation Service publishes maps and tables with soils information for every county in Vermont. The maps are detailed enough to differentiate soils within a given property. The surveys indicate suitability of soils for a range of land uses, including all types of farming, forestry, recreation or building. Hard copies of soil surveys are often available at public or college libraries and at Conservation District and Natural Resource Conservation Service offices. The Web Soil Survey is an online version of the soil survey; this interactive service allows you to target a specific location and learn about its soil features. Online at <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>. You can submit soil samples to the UVM soil testing lab for analysis. Online at http://www.uvm.edu/pss/ag_testing/.

ENVIRONMENTAL INTEREST LOCATOR — The VT Agency of Natural Resources offers an interactive online mapping tool that allows you to survey a specific property's features of environmental importance. Aerial imagery of the site, Act 250 permits issued nearby, hazardous waste sites, hydrography, storm water permit sites, threatened and endangered species, water supply source protection areas and wetlands are included. The website also links to other geographical information and items of interest, such as the Vermont Geological Survey. Online at <http://www.anr.state.vt.us/site/html/maps.htm>.

TOWN TAX MAPS — Town offices maintain tax maps that are public information. These maps are a good way to figure out who owns bordering property. The tax maps include the number of acres, the name of the property owner and the borders of all of the properties in the vicinity. Town offices also keep records that list all formal documents of significance associated with a piece of property; these may include information about easements, previous owners and landmarks delineate the boundaries of a property, such as roads, streams or outcroppings.

HARDINESS ZONE MAPS — Hardiness zones define where extreme low temperatures occur in a particular region. Perennials are generally classified according to the hardiness zones in which they can grow.

An excellent explanation of plant hardiness can be found online at <http://www.uvm.edu/pss/ppp/pubs/oh54.htm>.

Interactive hardiness zone maps can be found online at <http://www.plantmaps.com/interactive-vermont-usda-plant-zone-hardiness-map.php>.

For Developing Landowner-Tenant Relationships and Crafting Lease Agreements

Managing Landlord-Tenant Relationships: A Strategic Perspective

This 3-page fact sheet from Ohio State University gives guidelines for effective communication between farmer tenants and landowners for both the period prior to entering into an agreement and after the lease term starts. The information provided can be useful for maintaining positive relations between farmers and landowners in any state of the U.S.

Online at <http://ohioline.osu.edu/fr-fact/pdf/0004.pdf>.

Farmland Tenure and Leasing (Chapter III of the Legal Guide to the Business of Farming in Vermont)

This chapter details the essential terms of an agricultural lease and provides an excellent synopsis of legal issues surrounding farmland tenure in Vermont. A full hard copy can be ordered from UVM Center for Sustainable Agriculture by phone, (802) 656-5459. Individual chapters of the Guide can be downloaded for free.

Online at <http://www.uvm.edu/~farmtran/LegalGuideIII.pdf>

Lease Agreements Guide for Land Owners and Farmers

This fact sheet covers the basics of what should be included in effective farmland lease agreements.

Online at <http://www.uvm.edu/sustainableagriculture/Documents/leaseagreementguide.pdf>.

ONLINE TUTORIAL ON FARMLAND LEASING — Land For Good, a non-profit based in Keene, New Hampshire, provides an excellent online tutorial on farmland leasing. This tutorial introduces you to the benefits and challenges of leasing and explains types of farm leases and when to use them. Online at <http://www.landforgood.org/leasing/tutorial1.php>.

For Housing

Renting in Vermont: Information Handbook for Tenants and Landlords

Online at <http://www.cvoeo.org/downloads/housing/RENTINGinVERMONT.pdf>.

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Gaining ground for farmers

ELEMENTS OF A GOOD FARM LEASE

1. The Parties – Be clear about the identities of the landlord and the tenant. The lease should specify whether the party is an individual, LLC, corporation, or some other entity.

2. Description of the Property – The description should be sufficient to allow a stranger to identify the location of the property. The description should include the address, a map, and relevant specifics about the parcels being leased. A description of the initial condition of the property, including any structures, should be included. Typically, a dwelling should be leased separately, with the property immediately surrounding it as part of the residential lease.

3. Duration of the Lease – The start and end dates, and options for extension or renewal. The lease should also state whether it stays with the property if ownership transfers. FILE at REGISTRY.

4. Rent – Payment (known as the “consideration”) must be specified, even if it is no cost. There are various ways to calculate the rent. In a non-cash agreement, the type and frequency of services or the crop-share amount should be specified. If there are penalties (e.g., interest) for a late payment, those should be specified as well.

5. Taxes – Responsibility for property and any other tax payments should be specified.

6. Utilities – The lease should specify who is responsible for utility bills and what entity will be named on each utility account.



7. Permitted and Prohibited Uses – This is an important section. The lease should clearly define the permitted and prohibited uses of the property. What kinds of farming will be allowed? What counts as agriculture? Does a cord-wood operation qualify as agriculture? Commercial composting? A corn maze? Aquaculture? Definitions and perceptions of farming evolve, so it’s important to be both clear and flexible. Address whether farm-related education or non-agricultural uses such as recreation will be permitted. A landowner may also prohibit certain activities, e.g., removing trees or gravel.

Landowners may want to specify whether the land is to be limited to certain types of production, for example, only pasture or hay land, or to other restrictions or requirements regarding uses appropriate to the soils or topography of the farm. A map indicating where certain practices are allowed or prohibited is useful. It’s recommended to include a process for the tenant to request permission or clarification regarding uses. For example, the lease may say that removing trees is prohibited except as approved by the landowner in response to a written request by the tenant.

8. Entry – The lease should specify whether the landowner has permission to enter the property, and if there are limitations to such entry. For example, requiring the landowner to give 24 hours notice about a visit. Can landlord’s family members walk or picnic on the leased property?

9. Maintenance and Repairs – The lease should specify who is responsible for maintaining and making repairs to the land and any structures included in the lease, such as fences, buildings, storage structures, roads and irrigation systems. Repairs and maintenance are fertile areas for disagreements and disappointments between landowner and farm tenant. The distinctions among maintenance, repairs and improvements should be spelled out as clearly as possible.

Typically the tenant is responsible for basic maintenance and routine repairs. The landlord is usually responsible for major repairs, rehabilitation, and replacement of farm structures or systems. A process spelled out in the lease for the parties to decide when there is some question can save miscommunication and tension down the road.

10. Alterations and Improvements – The lease should specify who is responsible for improvements such as new structures or major alterations, along with the process for approval, and who bears the cost. It should specify whether such improvements are considered permanent fixtures and become the property of the landowner (compensating the tenant or not) or whether they may be removed by the tenant at the end of the term.

11. Stewardship and Conservation – In this clause, the parties can specify what practices may be required or encouraged. Often it's good to reference a separate stewardship plan as an attachment to the lease. The plan can be reviewed and revised annually. A lease may specifically encourage or require the development of a conservation management plan, a waste management plan, or a grassland habitat management plan.

12. Subletting – The lease may specify whether subletting is permitted and under what conditions. Farm leases typically do not allow subletting without some controls by the landowner such as prior review and approval of the sublease terms and sub-tenant.

13. Termination – The lease should indicate the procedure for either party to terminate the lease. Tenants should always have a reasonable exit option. The lease should specify if and when notice must be given. On longer-term leases, the ability of the landlord to terminate without just cause should be limited, otherwise the long-term nature of the lease is undermined.

14. Default – The lease should specify what constitutes default by tenant or landowner. Default means that one of the parties to the lease has violated a term by failing to do something or by doing something not permitted by the lease. The lease should allow for the party to remedy the default, such as to pay the late rent or clean up a pile of trash, and address any damages resulting from the default.

15. Monitoring and Reporting – The lease should specify how monitoring will be handled, whether there will be reporting between the farmer and landowner and what form such reporting would take. There may be a schedule of monitoring visits. The landowner may want someone familiar with farming to do the monitoring—a farming friend or a professional, for example.

16. Insurance and Liability – The lease should require the tenant to carry liability insurance, typically indemnifying the landowner. The landowner may carry casualty insurance on the structures. The lease should specify what will happen in the event the property is condemned or destroyed by fire or other casualty.

17. Dispute resolution – A lease also may include a dispute resolution process, from a mutual commitment to engage in a facilitated conflict management process, to shared cost of formal mediation.

Visit landforgood.org for tools and resources, or contact us for more information on a farm lease.

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*Educating, innovating and consulting to put
more farmers more securely on more land
in New England and beyond.*



FACT SHEET

“Lease-to-own” strategies for acquiring farmland

In the farming community, “lease-to-own” refers to certain methods for achieving land ownership. Financing a purchase with a down payment and conventional mortgage is simply not an option for many. Nor is receiving a farm as a gift or inheritance. Instead, farmers might consider more creative and financially manageable options to own farmland.

It’s important to note that “lease-to-own” is not a legal document or principle. Rather, “lease-to-own” refers to strategies to gain ownership of a particular property at a future point via specific legal transactions between the property owner and the buyer.

This fact sheet outlines three ways farmers can achieve lease-to-own objectives, the legal nature of these arrangements, and issues farmers and landowners should consider before adopting them. When exploring or pursuing each of these strategies—option to purchase, right of first refusal, and land contract—it’s important to work with an attorney, who can draft the relevant legal language. If an attorney doesn’t draft the document, his or her review can still alert individuals to potential problems.

1. Option to Purchase

Generally speaking, an option to purchase gives a buyer (who may also be a tenant) the right to trigger the sale of the property to that buyer/tenant according to specific procedures and within a specific timeframe. A landowner can grant a person the option to purchase a piece of property even if the parties have no lease arrangement -- often called an option contract.

In a farm lease with an option to purchase clause, an individual (the buyer/tenant) can obligate the landowner (the seller/landlord) into selling by drawing on the option. An option to purchase is generally written into a standard lease agreement, but in some situations, the lease and option to purchase are two separate documents. For example, a tenant and landlord may agree on an option to purchase after the lease has been signed. They don’t necessarily need to sign a new lease if they only need an option to purchase. Leases with an option to purchase included

might be called a “lease-to-own” agreement. Legally speaking, however, the document is still a lease with an option to purchase clause included.

Options to purchase come with various contingencies, and there is no single best clause or document. Although there are some overarching legal standards, the parties have wide legal latitude to craft an option that accommodates their unique needs, concerns, and resources. The clause might occupy a couple sentences or several pages. Simplicity is not necessarily a wise objective. Purchasing property is not simple and a simple option to purchase may ignore very important issues.

At a minimum, an option to purchase clause in a lease should contain the following details:

1. *Description of the property subject to the option.* The property included in the option may or may not be the same as the leased premises. Parties should make sure to identify any buildings, equipment or other resources included in the option.
2. *Consideration given for option.* “Consideration” is a legal concept that means both parties gave and received something of value, and consideration makes a contract enforceable. If one party receives something for nothing, they received a gift which may be revoked. If the option to purchase is separate from the lease, it must have its own consideration to be enforceable. If the option to purchase is included in a lease, the recommended legal practice is for tenants to pay an extra one-time fee for the option.

The option clause should state the fee and that the parties agree it is adequate. The dollar value of the fee is not important so long as something of value is given. It could be nominal. Although additional consideration (in the form of an extra fee) is a best practice, a court would likely find that lease payments under a lease agreement including an option to purchase are consideration enough for the option.

3. *Duration of option period.* The document should describe exactly when the tenant may elect to use the option to purchase. Does the option begin and end on certain dates? Is the option available at any time during the lease?
4. *Terms of the option.* How is the option activated? How does the tenant let the landlord know that s/he intends to move forward with the purchase?
5. *Price of the property.* The tenant will need to know the purchase price of the property so he or she can make a decision about purchasing it. This may be as easy as stating a dollar value for the property right in the option to purchase clause or document. Most

parties will not choose this strategy because it is difficult to accurately forecast the value of a specific property. More likely, the price will be determined by an appraisal to be performed at the time that the option is exercised. Or, it could be determined by a formula. Regardless of what method the parties choose, the document should be very clear about how the price is determined.

6. *Timetable for acceptance or rejection of purchase price.* Where the purchase price depends on a formula or appraisal, the tenant might also want the ability to back out of the sale if the purchase price turns out to be unexpectedly high. If so, this right must be specified in the lease. The clause should detail how long the tenant has to make the decision after the price is set. Many tenants also want the purchase subject to the tenant's ability to secure financing. This is what makes it an *option* to buy the land, rather than an obligation. The right starts as an option but becomes an obligation only after specific conditions are met. Tenants and landlords should pay special attention to these timeframes to ensure everyone has enough time to move the transaction forward as desired.
7. *Whether and how a portion of rent may go to the purchase.* Some options to purchase allow the tenant to assign a portion of each rental payment to the purchase price, if the tenant exercises the option. The option should fully describe the amount, if it's held in escrow, how it applies to the purchase price, and if it's returned should the option not be exercised. Farmers taking advantage of this opportunity should work with an accountant or bookkeeper to make sure this is handled properly. The portion of rent that goes toward the purchase is considered an equity interest. This would be handled differently from rent by a court of law.
8. *Terms on which property is transferred if option is exercised.* Attorneys often recommend including many or most of the terms for the property sale right in the option to purchase. This makes things easier for the tenant because s/he knows exactly how the process will proceed and can evaluate if it's the right choice. Also the parties might have some incentive to complicate the transfer if the sale isn't in his or her best interest anymore, and including the terms can prevent complications.

A sample "option to purchase" document is available from Freelegalforms.uslegal.com at freelegalforms.uslegal.com/options/purchase-property. This example illustrates one way an option to purchase might describe items 1-5 above. (This is a sample, not an endorsement of this specific document.) Although the sample is presented as a stand-alone contract, the same provisions could be incorporated right into a lease. Because the sample is separate from a lease, it doesn't handle allocating a portion of the rent to the purchase price. Farmers and

landowners wishing to outline the terms of the property transfer in advance should consult a sample “offer to purchase” agreement tailored to the state in which the farm property is located.

Right of First Refusal

A right of first refusal can be written into a lease agreement, although it can be a stand-alone legal document between a landowner and a prospective purchaser. Generally, a right of first refusal allows an individual would-be purchaser to intervene after a third party has offered to purchase the property. The individual usually has the chance to buy the property on the terms the seller and the third party negotiated. Rights of first refusal clauses are highly variable. The seller may not need to find a third party purchaser first. The seller may simply offer the property for sale to the tenant/buyer at a specific price. If the buyer thinks the price is too high or the terms too onerous, the seller may look for a third party who will accept his or her terms.

The right of first refusal differs from the option to purchase in that the latter is pre-emptive: the buyer can choose to activate the option to purchase. With a right of first refusal, the individual usually has to wait for a third party to elect to buy the property or for the landowner to offer it for sale. Only then can the individual (tenant) step in to become the buyer.

Rights of first refusal and options to purchase are alternatives- a lease should not include both.

Despite their differences, a right of first refusal contains some of the same elements as an option to purchase. The description of the property, consideration paid for the right, and the term (when it is in effect) of the right should all be listed in detail. A right of first refusal should also address the following details:

1. *What is the nature of the right of first refusal?* What exactly is the tenant receiving with this right? Is it the right to buy the property on the same exact terms that another third party has already negotiated with the seller? If not, does the seller assemble the terms and then offer it to the tenant? Can the tenant negotiate the terms, and if so, how? Is the seller required to offer the property at an established price or at a price determined by an agreed-upon formula? This section has enormous variation and need for detail depending on what the parties agree upon.
2. *What is the timing of and how does the tenant exercise the right of first refusal?* The parties need to clearly understand how the property owner will notify the tenant that s/he has decided to sell and the right is now active. Then, the document should articulate exactly how long the tenant has to decide on the offer or re-negotiate terms

as allowed. It may also need to state what the tenant/buyer must tender to exercise his or her right- for example, does the purchaser have to tender the full purchase price in cash or secure adequate financing by a specific date?

A sample right of first refusal document is available from Freelegalforms.uslegal.com at freelegalforms.uslegal.com/real-estate/right-of-first-refusal. (This is a sample, not an endorsement of this specific document.) As with the option to purchase, this sample is very brief and doesn't go into detail on how the property will be transferred or any additional terms on the transfer that most buyers want in a real estate transaction. Farmers interested in more detail should consult a sample "offer to purchase" contract for the state in which the farmland is located.

Land Contract (also known as Contract for Deed or Installment Sale)

In a land contract the buyer makes installment payments over a period of time. Once the final payment is made, legal title to the land is transferred to the buyer. The buyer (former tenant) now officially owns the land. Land contracts are popular for transferring property between family members. A land contract mimics lease-to-own in many ways, but they are not the same.

Sometimes the timeline of a land contract covers a very long period of time, similar to a mortgage—15, 25, or 30 years. A land contract is a way to initially finance a land sale without a traditional bank mortgage. However, often the parties agree on a balloon payment at a particular time—often several years down the road—at which time the buyer must pay in full. Ideally the farmer will have established a sufficiently profitable operation to finance a conventional mortgage at that point to cover the balloon payment.

Under this strategy, the buyer agrees to make monthly payments to the seller, generally without an initial down payment. The property is considered "sold" to the buyer in that the buyer holds most of the legal rights and responsibilities of an owner. However, full legal title to the property often does not pass until all or a significant number of monthly installment payments have been made. A land contract can be a good way to receive nearly all the rights and responsibilities of ownership without paying the full purchase price immediately.

A land contract often comes with risk. If the buyer defaults on (misses) a payment, the seller may be able to withhold title to the land because the buyer essentially defaulted or breached the contract. The buyer's equity in the payments made up to the point of default may be lost. Some legislatures and courts have made land contracts more equitable to the buyer. For example, the court system may require a land contract seller to go through the foreclosure process before evicting a defaulting buyer. In other states, sellers must return a portion of the monthly installments, if they exceeded the fair rental value of the property. Some courts may

also consider the title to be transferred after a significant number (rather than all) of the payments have been made. These protections apply regardless of whether they are written into the land contract itself.

In many respects, a land contract has the same provisions as a standard farm lease. Land contracts look very similar to leases with an option to purchase provision that allocates a portion of the rent to a future purchase agreement. The parties may interact with each other in the same way: one party pays the other a monthly payment. Yet legally speaking, the two are quite different and the distinction matters on several levels. A land contract transfers nearly all the rights and responsibilities of ownership such as the right to mortgage the property, for example. By contrast, a lease transfers a legal right to use the land for a specific purpose. Responsibilities under a land contract may include taxes and assessments, for example; these are usually not the obligation of a tenant. A land contract and a lease may differ with respect to how court procedures are handled following a default.

Whether an agreement is a lease or a land contract is based on the parties' intention. Did the parties intend to transfer the rights of ownership (a land contract), or the right to possess and control the property without ownership (a lease)? The signed documents should reveal the parties' intentions. Did they call the document a lease or a land contract? Do the clauses in the lease show the intent to transfer ownership or just the right to use the land?

Farmers and landowners must make a conscious choice about whether the transaction is a lease or a land contract. The parties should back up that choice with a consistent document. Some parties make the mistake of putting "land contract" at the top of the document but write clauses that transfer only the right of possession, not ownership. A lease with an option to purchase won't be seen as a land contract in court.

USDA Land Contract Guarantee Program. The USDA Farm Service Agency's "Land Contract Guarantee Program" promotes land contract sales by addressing two landowner concerns. Landowners can elect a "Prompt Payment Guarantee" that protects landowners against the risk that the buyer will miss a monthly payment- a situation which might put the landowner's own finances at risk. In the Prompt Payment Guarantee, the federal government through FSA will pay up to three monthly installments plus taxes and insurance if the buyer defaults.

Some landowners/sellers, especially those depending on the land to finance retirement, may be concerned that the land will decline in value. If the buyer defaults and the seller is returned a property with much less value, the individual's retirement financing is threatened. The "Standard Guarantee" program will provide the seller with up to 90% of the outstanding principle if the buyer defaults.

The Land Contract Guarantee Program is restricted to beginning farmers and properties sold for \$500,000 or less, among other requirements. Farmers and landowners should contact their local FSA office for more information.

For more information on writing a land contract, including a sample agreement and checklist of issues to consider, see Farm Commons' resource on drafting land contracts at farmcommons.org



LEASE AGREEMENT TEMPLATE

This Lease Agreement is entered into on this ____ day of _____ 2018, between _____ (“Lessor”), and _____ (“Lessee”) for the Lease of certain land to develop an agricultural enterprise.

I. Prologue and Statement of Purpose

EXAMPLE: Whereas both parties share a commitment to caring for the Premises; whereas Lessor desires to provide a secure farming opportunity; and whereas Lessee seeks to develop a viable farming operation at this location, the parties agree to work together to steward the natural resources of the Premises and to promote the vision and goals shared by the parties, and agree as follows _____.

Add yours here:

II. Description of Leased Premises

The Premises shall consist of lands, roads and structures, more particularly described in Attachment A to include the following:

III. Lease Term and Renewal

- a) The term of this Lease shall commence _____ and end _____.
- b) Provisions to renew:

IV. Lease and Other Fees

- a) Lessee shall pay a fee of _____, payable as follows:
- b) On each anniversary of the start date, the lease fee shall be recalculated based on:
- c) Lessee/Lessor is responsible for these additional fees:

d) Lessee/Lessor shall pay the following utility bills:

V. Permitted Uses and Use Restrictions

a) Lessee is hereby permitted all normal activities associated with agricultural purposes including but not limited to the following: planting, cultivating and harvesting of crops, including perennial crops; application of soil amendments; pest and weed management, erection and management of temporary structures such as greenhouses, hoop houses, temporary fencing, irrigation systems, livestock sheds etc.; use, routine maintenance and storage of tools and equipment; post-harvest washing, cooling, sorting, and packing; management of brush, field edges and roads; on-site sales of goods produced on the Premises; and related educational and other public programming on the Premises.

b) In addition, Lessee is permitted these uses:

c) Lessee shall not, unless by mutual agreement and prior approval to the contrary, engage in any of the following activities on the Premises:

g) Lessee agrees to abide by all local, state and federal laws and regulations.

h) Lessor reserves the right to enter the Premises for inspection regarding compliance with the terms of this Lease, during reasonable times.

i) Lessor reserves the following additional rights:

VI. Maintenance, Repairs and Improvements

a) At the commencement of this Lease and annually, the Parties shall agree on general maintenance activities for the Premises as follows:

- b) Lessee is responsible for normal maintenance of the Premises including, without limitation, performing minor repairs within the Premises, and as otherwise agreed between the parties.
- b) At the commencement of this Lease and annually, the Parties shall agree on major repairs, additions, alterations, replacements and improvements. Such specification shall be in written form and signed by both parties, specifying the following:
- d) Lessee may place and shall maintain farm improvements such as: _____ upon the Premises. Lessor shall approve the location of such improvements. At the termination of the Lease the following procedure shall be followed regarding the disposition of such improvements:

VII. Insurance

- a) Lessee is responsible for maintaining general liability insurance with coverage of \$2 million aggregate/\$1 million per occurrence and naming Lessor as additional insured. Lessee shall provide Lessor with evidence of the above insurance coverage at the commencement of the Lease term and annually thereafter on the renewal date of such policies.
- b) Lessor shall maintain fire and extended casualty insurance coverage on the Premises.

VIII. Transfer, Sale, Assignment and Sublease

- a) Lessee may/may not sublease or assign the Lease without written permission from Lessor, according to the following conditions and procedures:
- b) This Lease shall remain with the land; transfer of the Premises or portions thereof by sale or estate shall not invalidate lease terms.
- c) Lessee agrees to abide by terms of any conservation or agricultural easement placed upon the Premises or portions thereof.

IX. Termination and Default

- a) Either party may terminate this Lease upon default of any term of the Lease. Upon occurrence of default, the defaulting party shall receive a written notice of default from the other party, with a specified time period to remedy the default. Failure of the other party to remedy such default shall be cause for termination.

- c) Lessee may terminate this lease without penalty with a six month notice.
- d) At the end of the Lease term or other termination, Lessee must vacate the property and remove all personal possessions and any improvements per above. Property must be left in the same condition as at the commencement of this Lease, or better, normal wear and tear notwithstanding.

XI. Communications and Dispute Resolution

- a) The parties agree that open communications are the key to a successful Lessor-Lessee agreement. To that end, they agree to communicate their questions and concerns in a timely and appropriate manner, and in writing if deemed necessary by either party.
- b) Lessor grants Lessee the right of quiet enjoyment.
- c) Should the parties be unable to settle any disputes, they agree to equally share any expense associated with retaining a qualified third party to facilitate or mediate said dispute, provided that both parties agree to choice of the third party.

IN WITNESS THEREOF, the parties have executed this Lease effective as of the date first set forth above.

SIGNATURES OF BOTH PARTIES.

DATED AND NOTARIZED.

REGISTERED (or Notice of Registration) AT THE REGISTRY OF DEEDS.

BUSINESS LIFE CYCLE TRANSITION PLANNING (by age of farmer)

EARLY (20s -40s)	MID (40s-60s)	LATE (60s-70+)
<ul style="list-style-type: none"> • Focus on financial & production systems • Develop business plan and refine re growth, profitability and family needs • Network with other farmers • Create processes for good communications with family and employees • Acquire assets (farm and non-farm) • Create will, Power of Attorney, Health Care Directive, guardianship; revisit periodically • Start saving (incl. retirement, rainy day/emergency, kids' college, etc.) • Establish business entity/ies and other legal structures for ownership of assets such as farmland, infrastructure, and business entity • Monitor and assess business viability • Develop advisor team (legal, financial, etc.) • Mature family business practices (e.g., meetings, records, job descriptions) • Assess business viability; adjust/expand/adapt business per plan • Consider/obtain insurance (liability, casualty, health, life, crop, other) • Create/monitor contingency/exit plan • Fine-tune business plan 	<ul style="list-style-type: none"> • Acquire additional assets • Develop a vision for succession/exit and a written plan; share with family • Review insurance needs (life, health, long-term care); implement needed • Re-evaluate/expand team of advisors • Contribute to savings plan(s) • Develop transition plan: <ul style="list-style-type: none"> • Formal retirement plan • Legal/business structures • Estate plan; update will etc. • Groom family successor/implement plan to recruit successor/prepare business for sale • Train successor esp. financial mgt. • Assess business value and viability; make adjustments • Develop structures for asset transfer; buy-sell agreement • Consider/pursue farmland protection easement • Scale business up as needed to support you and your successor • Monitor/update contingency/exit plan 	<ul style="list-style-type: none"> • Update succession plan • Clarify retirement path • Calculate retirement needs, including financial, social, health care, etc. • Consult regularly with advisors • Revisit estate plan incl. will • Continue (or begin) regular family/transition meetings • Begin process to cut back; focus on farm activities you enjoy • Complete formal transfer of management control • Continue to mentor your successor • Determine retirement housing; move from farm if in the plan • Begin or continue asset transfer according to plan; may include sale/gift of real estate • Shift to non-farm activities • Determine ongoing income share from farm if part of the plan



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Beginning Farmer Tax Credit Fact Sheet

On May 30, 2017, Governor Mark Dayton signed into law a Tax Credit for Minnesota beginning farmers. The new law will provide tax credits for the rent or sale of farm land or a variety of farm assets to beginning farmers. While similar to tax credits in Iowa or Nebraska, Minnesota will become the first state to provide incentives for the sale of farm land.

A Beginning Farmer is defined as:

- A Minnesota resident who is seeking entry, or has entered into farming within the last 10 years
- A farmer who will provide the majority of the labor and management of the farm that is located in Minnesota
- Has adequate experience and knowledge of the type of farming for which they seek assistance from the Rural Finance Authority
- Can provide positive projected earnings statements
- Is not directly related to the owner of the agricultural asset (*This includes parents, grandparents, brothers, sisters, spouses, children, and grandchildren. Legal adoption shall be considered in full effect*)
- Has a net worth that does not exceed the limit provided under section 41B.03, subdivision 3, paragraph (a), clause (2). Currently this limit is \$800,000.

The beginning farmer will need to participate in an approved financial management program. Costs of financial management programs up to a maximum of \$1,500 per year (for up to 3 years) may also be eligible for a tax credit. The financial management credit need not be tied to any agricultural asset sale or rental.

Definition of "Agricultural Asset":

- Agricultural land, livestock, facilities, buildings and machinery used for farming in Minnesota

The credit to the agricultural asset owner is as follows:

- 5% of the lesser of the sale price or fair market value of the agricultural asset up to a maximum of \$32,000;
- 10% of the gross rental income in each of the 1st, 2nd, and 3rd years of the rental agreement, up to a maximum of \$7,000 per year, or
- 15% of the cash equivalent of the gross rental income in each of the 1st, 2nd, and 3rd years of a share rent agreement, up to a maximum of \$10,000 per year.

The agricultural asset owner can claim credits in one of the above categories in a given tax year up to the maximums stated.

Role of the Rural Finance Authority (RFA)

The RFA will administer the tax credits by:

- Certifying beginning farmers
- Assisting beginning farmers with locating eligible financial management program options in their area
- Certifying that owners of agricultural assets are eligible for the tax credit. This is a first come, first served initiative. The maximum amount available in 2018 is \$5 million. This increases to \$6 million per year in 2019 thru tax year 2023. The asset owner may be an individual, trust, a qualified pass-through entity.