



## A Guide to Land-Lease Agreements for Farmers and Landowners

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Farmers have two basic options when it comes to holding land: own it or lease it. Though many farmers prefer to own all of their land, it is rarely possible. Good farmland is often held by families for generations, and is rarely offered for sale. When land is offered for sale, stiff competition from other buyers is the norm. In addition, financing may be unavailable or unaffordable.

Many farmers and landowners find that leasing is a good option. Leased land can be easier to find. Rental rates can be easier for farmers to manage than loan payments. Renting can provide landlords a steady income stream without the hassle and work of farming land directly. Good relationships between farmers and their landlords can give farmers a leg up when a landlord decides to sell, and gives landlords a ready market for their land – without paying brokerage fees.

There are many variables to consider in a lease agreement, and the process of negotiating a lease requires careful consideration and a strategic approach. This article discusses a number of important issues that farmers and landowners should consider before entering into a land-lease.

### **TYPES OF LEASES**

Leases for farmland vary in form. Many are written contracts (the best approach). However, because farmers and landowners often know each other and have done business for long periods of time, some agreements are not reduced to writing. In such instances, enforceable leases might be implied through the parties' actions, or created through oral communications. However, the terms of oral leases are often hard to prove, and oral leases may be easy to terminate.

In return for possession and control of the owner's land, the farmer pays rent, which can come in different forms. Many leases require fixed cash payments. But others require a share of the proceeds of the sale

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### **PRACTICE AREAS**

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of crops or livestock produced on the property - or some combination of fixed rent and shared proceeds.

Under a cash lease, the landlord receives a predictable stream of payments, and the farmer bears the risk - especially from falling commodity prices. At the same time the farmer can benefit under a cash lease if commodity prices improve. Provisions can be built into the lease to help address these issues and reduce risk exposure.

Under a crop-share lease, the landlord typically provides the land, and the farmer provides equipment, contracts for input costs (such as seed and fertilizer), and farms the land. In lieu of fixed cash rent, the landlord receives either a cash payment based upon net proceeds from the sale of the crop, or directly receives a portion of the crop that the landlord can then market. Here, the landlord assumes more downside risk in this type of lease, but also can have more upside depending on commodity prices and harvest yields.

### **ISSUES TO CONSIDER**

There are many important, complex issues to consider when negotiating a land-lease. Because of this, leases should be documented in a written agreement signed by both parties. Some issues depend on the type of lease being negotiated - for example a crop share lease will likely require more provisions addressing economic hedging and the relative contributions required by each party than in a cash lease. Regardless of the nature of the lease, though, one thing that is consistent is that the negotiation of a fair, clear and effective lease is a critical step to establish a good working relationship between landlord and tenant, and to ensure a successful agricultural operation.

### **LEASE TERM AND METHOD OF TERMINATION**

A key provision of any lease is the "tenancy," which is the property right a tenant receives under the lease. There are three types of tenancies in Michigan:

Fixed term tenancy is one that has a specific start date and fixed termination date, generally for a period of years.

Periodic tenancy is indefinite in duration, such as month-to-month or year-to-year.

Tenancy by sufferance is created by operation of law, and generally arises if a tenant holds over without the landlord's consent.

Most land-lease agreements include fixed terms tenancies which terminate at the expiration of the term. The lease may include options for renewal, as well as consequences for failure to vacate upon lease termination. A lease may provide, for example, that if a tenant holds over after the fixed term expires, the tenancy will be considered a month-to-month tenancy. Leases also commonly include termination clauses that allow one party or the other to end the lease before the end of the term if certain events occur, such as non-payment of rent by the tenant.



Many leases provide for a multi-year tenancy, as this type of arrangement generally incentivizes the parties to invest in improvements to the land, and promotes stability in the business relationship.

### **COST AND RESOURCE SHARING**

Crop share leases should include clear, detailed provisions identifying the landlord's responsibilities in sharing costs and contributing resources for the farm's operations. These provisions may cover areas such as cost sharing for seed, fertilizer and herbicide, as well as use of capital equipment. There are many ways in which these provisions can be negotiated and divided, so careful documentation is required.

### **HARVESTING**

Similarly, a crop share lease should explain how the costs - such as transporting and storing crops - should be shared between landlord and tenant.

### **FINANCING IMPROVEMENTS**

Farms are expensive to operate, and require periodic investment. Leases should identify the manner in which the costs of making permanent improvements to farm property should be dealt with. The parties may decide that such costs are to be borne by the tenant, or shared by the tenant and landlord. Another option is for the landlord to finance the cost of the improvements with corresponding rent increases being paid by the tenant.

### **LAND AND BUILDING MAINTENANCE**

Landlords are, understandably, concerned about the long-term quality, sustainability and productivity of the soil and buildings on their land. Leases often address each party's responsibilities - and costs - relative to land and building maintenance.

### **LAND USE**

Many leases restrict the tenant to agricultural use and require the tenant to use good agricultural practices. Some leases dictate a particular crop rotation. It is also common to include prohibited uses, such as cutting timber or using pesticides or herbicides off-label.

### **A STRATEGIC APPROACH TO LAND-LEASE AGREEMENTS**

These are just a few of the many issues that should be dealt with during land-lease negotiation and documentation. Whether farmer or landowner, the first step that any party should take when considering a land-lease arrangement is consulting with experienced legal counsel. A good attorney can help his or her client take stock of their goals for the property, and develop a strategy for negotiations that will lead to a positive outcome. An experienced advisor can also help bring to light issues that the parties may not otherwise have considered. For landowners, an attorney can help analyze issues such as liability exposure related to a farmer's operations, and insurance coverage relative to such risks. For farmers, an attorney can help identify



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and apply for government programs and subsidies that may be able to offset some of the costs of a lease.

If you are a farmer or a landowner, and would like to learn more about land-lease agreements, please contact Todd Hoppe at [thoppe@fosterswift.com](mailto:thoppe@fosterswift.com)