

Farmland Leasing Checklist

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A written contract is still an essential business practice when leasing farm property. It forces detailed consideration, communication, and understanding by both parties. It serves as a handy reference in case details are forgotten or there is a death of the tenant or landlord.

The contract should encourage the most profitable, long-term operation of the farm and be beneficial for both parties. Are the returns proportional to the contributions both tenant and landlord make to the business? Will the lease prevent or discourage a tenant from operating the farm in the same way a well-financed owner-operator would run it? Are the best farming methods, conservation practices, and/or environmental practices utilized? What is the plan for needed improvements? Every contract or lease agreement will one day terminate; how is termination to be handled? What method(s) will be used to settle accounts?

The following checklist will assist tenants and landlords to consider components of a well-designed lease agreement. It is advisable to have an attorney for one party prepare the lease, with a review by the attorney for the other party.

Parties to Lease and Description

- ☐ Date the lease is entered into.
- ☐ Names and addresses of the landlord and tenant.
- ☐ Legal description of the leased property.
- ☐ Signatures of the landlord and tenant.

General Terms

- ☐ Time period of the lease, including beginning and ending dates.
- ☐ Rental amount for cash lease; base rent for flexible cash leases, and respective shares and contributions for a crop-share lease.
- ☐ When and how rent will be paid and penalties for late payments.
- ☐ What is the clause, if any, for automatic renewal of the lease?
- ☐ Provision for carrying liability insurance on the property
- ☐ Insuring the crop: under cash leases, tenant pays all premiums and receives all indemnities; under crop-share, each party can insure their share.
- ☐ Statement that the landlord and tenant do not intend to create a partnership by entering into the agreement. Neither party will obligate the other for debts/liabilities or damages.
- ☐ Conditions under which the tenant may or may not sub-lease the property. (Also consider hunting rights, grazing stalks)
- ☐ Specify mineral and water rights.
- ☐ If tenant is given rights to farm improvements (buildings, bins, for example) at what rental rate?
- ☐ If landlord does not own all irrigation equipment, how rent is adjusted to reflect that change?
- ☐ Provisions for landowner(s) and tenant(s) reporting of crop/land/business operations to include what these reports will include, how, where, by what means, and how often this reporting will take place.

Termination

- ☐ When and how the lease may be terminated and requirements for notice of termination?
- ☐ Reimbursement provisions for crop nutrients, lime and/or completed fieldwork upon termination of the lease.
- ☐ Acts of the tenant that would constitute default of the lease.
- ☐ Tenant's rights if the property is transferred or condemned during the lease period.
- ☐ Reimbursement provisions for a crop still in the ground when the lease is terminated.

Operation and Maintenance

- ___ Desired or prohibited farming practices, including types of chemicals that may not be used on the property.
- ___ Process of measuring and maintaining soil fertility and pH levels. (Include minimum required amounts of fertility and remedial actions)
- ___ Which party is responsible for controlling noxious weeds?
- ___ Which party is responsible for maintaining fences?
- ___ Whether the tenant has the right to make improvements and be compensated for improvements.
- ___ Is tenant responsible for non-crop acres (for example for mowing)? How is he compensated for that work?
- ___ Will the tenant be required to carry insurance to cover costs of mitigating his activity – like an accidental chemical spill?
- ___ Whether the tenant has the right to utilize improvements made by the landlord.
- ___ Provisions for soil-conservation practices.
- ___ Statement regarding the existing environmental status of the property and responsibility to minimize activities that may cause contamination.
- ___ Use of non-cropland, garden plots, trees, buildings, grain bins, pasture or other areas not rented for cropland.
- ___ Provision identifying who is responsible for maintenance on irrigation equipment or other farm use assets identified in the lease.
- ___ Any provisions for the compensation of the tenant(s) for conducting improvement(s) or maintenance on the property or associated use assets.

Landlord Rights and Government Payment

- ___ Landlord's right to enter the property for specific purposes.
- ___ Landlord's right to a security interest in the crops or other provisions for ensuring payment.
- ___ Statement of which party will participate in federal farm programs, including responsibility for eligibility and receipt of payments.
- ___ Nature of landlord participation in management. This may relate to issues regarding income and self-employment, taxes, social security payments, and estate planning.

Arbitration of Difference

- ___ Provision that any amendments must be in writing and signed by both parties.
- ___ Procedure for resolving disputes, including the applicable state statutes.

Crop-Share Provisions

- ___ General agreement, sharing of crops and tenant's contribution of machinery and labor. Each party should share returns in the same proportion as resources are contributed.
- ___ Sharing of operating expenses, generally variable expenses are shared in the same percentage as the crop share; if there are adjustments for no-till, custom application, liming or any new technologies adopted.
- ___ Storage and/or delivery of landlords share of crops.
- ___ Compensation upon termination of the lease. (example: if tenant paid for and applied lime)
- ___ What records are to be kept by whom and how will this information be shared.

¹ Ohio State University Extension Fact Sheet, FR-0003-01, Donald J. Breece, District Specialist, Farm Management, Southwest District

For more information:

<http://www.aglease101.org/DocLib/default.aspx#LeasePubs> – Leasing Publications

<http://www.ianrpubs.unl.edu/live/ec862/build/ec862.pdf> - Flexible Leasing of Farmland

<http://aglease101.org/> - for good general farmland lease information