

# Using Leases to Meet Financial and Stewardship Goals



Prepared for  
Land Stewardship Project

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## Landowner Benefits of Leasing

- Reliable revenue stream
- Property tax advantages
- Burden of property maintenance can be shared
- Land management that meets landowner's stewardship goals



## Landowner Benefits of Leasing

- Keeping land in production
- Offering opportunity to new farmer or farm family
- Flexibility: can be a “trial period” if considering transitioning land



## Key Points to Remember

- There are many non-legal considerations not covered by this presentation, including:
  - Financial and stewardship goals assessment, assessment of land, suitable operations for the land, how to find the right tenant, and more.
- Successful relationships are built on shared values and good communication.
- Communication is critical at every stage of the relationship.

## Basic Lease Requirements



- Leases are governed by state law.
- Land leases for **more than one year MUST be in writing.**
- Land leases for **one year or less (12 months, not a crop year) can be valid even if not in writing...**
- ...as long as agreement on **basic terms.**

## Basic Lease Terms

- **Names of landlord and tenant**
- **Description of the property to be rented**
- **Rent amount (\$)**
- **Lease term, with start and end dates**
- **Usually, signatures of both landlord and tenant**



## Lease Length



- **Short-term leases (1-3 years) offer flexibility; can be a trial period.**
- **Long-term leases are more secure and allow tenant to invest in the operation and the soil. State law may limit ag lease length**
  - **Ex. MN 21 years, WI 15 years**
- **Depends on parties' goals and needs**

## Lease Length



- **Rolling leases have the term “rolled over” each year.**
- **3+ years generally best for sustainable practices, as longer lease = greater stake for tenant**
- **Takes time for financial benefit, soil health**
  - **Sustainable farm tenants add value**

## Payment Options



- **Cash Lease**
  - Agreed amount paid regardless of the success of the operation.
  - Often split; some paid at beginning of lease, remainder at end of season.

## Determining Cash Rent Amount

- Amount of cash rent is based on many factors, including:
  - **Market rental rates**
  - **USDA county average rental rate**
  - **Location**
  - **Soil quality**
  - **What else comes with the land – e.g., irrigation, equipment, tilling, etc.**
  - **Personal needs**

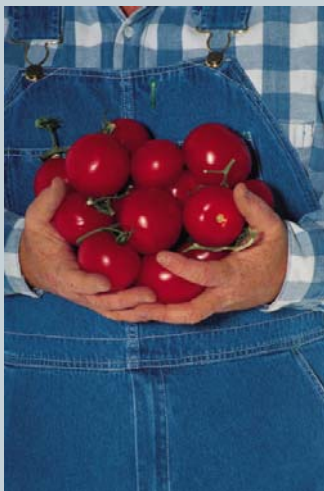
## Cash Payment Options To Encourage Sustainable Practices

- **Graduated Rent – Lower initial rent**
- **Accounts for extra cost of sustainable practices, accounts for possible reductions in yield (especially in first years)**
- **Rises as new farmer learns and yields improve**

### Sample Provision

**The total rental amount for the 1st year shall be reduced by 20%, for the 2nd year by 15%, for the 3rd year by 10%, and for the 4th year by 5%. Tenant shall pay the total rental amount in the 5th year and beyond.**

## Crop-Share Lease



- **Rent is a specified share of crop**
- **Takes farm yield & market price into account. Shares risk.**
- **LL or tenant sells product**
- **Sometimes the landowner and tenant split both costs and profits.**

## Crop-Share Lease



- **NOTE: Impact on USDA farm program payments, taxes, social security payments**
  - **Because LL viewed as self-employed as part owner of farm operation**

## Flexible Cash/Crop-Share Lease

- **Hybrid of cash and share models.**
- **Parties agree on a base rent price that is less than straight cash lease.**
- **Landowner receives portion of proceeds from sales.**
- **In good years, both parties benefit; in bad years, landowner still receives base rent.**



## Flexible Cash/Crop-Share Lease

- **The additional rent can be based on farm yields, crop prices, revenues**
- **High yield = higher rent, Low yield = lower rent, etc. (actual yield or county yield average)**
  - **NOTE: Impact on USDA farm program payments (if based on actual yield).**
- **Price (market & date) vs. revenue (safer)**
- **Put it in Writing! (Pick calculation, percentage, etc.)**



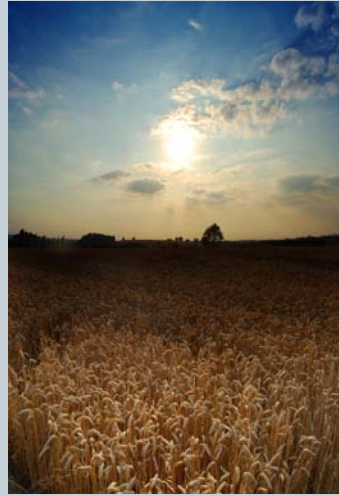
## Managing Risk: Insurance

- **Standard homeowner's insurance policy usually does not include activities relating to commercial farming.**
  - Can ask tenant to show a certificate of insurance from agent, naming landowner as "additional insured." **OR**
  - Landowner adds "incidental farm and animal liability endorsement." May not be available from insurer. **OR**
  - Landowner replaces her homeowner's insurance policy with their own farm liability policy. Makes most sense if landowner is partnering with tenant in farm operations. **OR**
  - Landowner keeps her homeowner's policy and adds commercial liability policy that covers "lessor's risk," also known as landlord liability insurance.



## Environmental Laws

- **Compliance with federal, state, and local environmental regulations.**
  - **Ultimate responsibility is with landowner.**
  - **Important to make sure tenant is complying with those laws.**
  - **Lease agreement can specify that tenants are responsible for following all federal, state, and local environmental regulations**
- **Pesticide application. Discuss expectations up front and include in lease.**



## Zoning

- **Zoning is governed by local ordinances.**
- **May need permit for certain things, such as new structures, greenhouses, housing, farm stands.**
- **Specify who is responsible.**



## Using Rent to Encourage Sustainable Practices

- **One-time Rent Reduction**

**Sample Provision**

**The first annual rent amount shall be reduced by \$\_\_\_\_.**

- **Reduction to Reward Specific Practices**

**Sample Provision**

**The agreed rental amount shall be reduced by 20% for cropland acres in transition to certified organic status, and the agreed rental amount shall be reduced by 25% for certified organic cropland acres.**

## Encouraging Sustainability

- **Reimbursements or cost-sharing for improvements**
  - Normally become LL property (unless agreed otherwise)
  - Protects against tenant capital or effort loss
  - LL approval prior to construction



## Encouraging Sustainability, cont'd



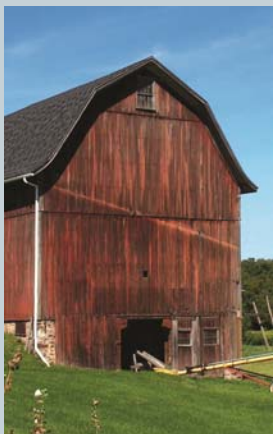
- **Sharing costs of sustainability practices**
- **Requires ongoing communication**
  - **Reports on farm operation (OSP, FSA reports)**
  - **Calls, emails, letters**

## Requiring Sustainability

- **NRCS plan can be incorporated into lease**
- **Threshold and monitoring provisions can be included in lease (e.g., acceptable levels of soil erosion). Be sure to spell out who pays. If tenant, should be factored into rent calculation.**
- **If land is already enrolled in a conservation or preservation program, be sure to include in the lease the requirement that tenant must comply with all requirements of the program.**



## Other Lease Options



- **Ground Lease**
  - Own house, barn, fencing, etc. (non-removable improvements), but rent land (or most land).
  - At end, improvements sold (next tenant, LL).
  - Allows tenant to build equity over time.
- **Contract for deed**
- **Option to buy, right of first refusal**

## Contracts for Deed

- Seller keeps legal title until contract paid in full
- **Advantages:**
  - Quicker and simpler than a mortgage
  - Can provide financing option for those who don't qualify for a mortgage
  - Lower down payments and interest rates and no mortgage origination fees
  - Tax advantage for sellers



## Contracts for Deed

Minnesota Uniform Conveyancing Blanks  
Form 30.4.1 (2006)

NOTICE OF CANCELLATION OF CONTRACT FOR DEED

YOU ARE NOTIFIED:

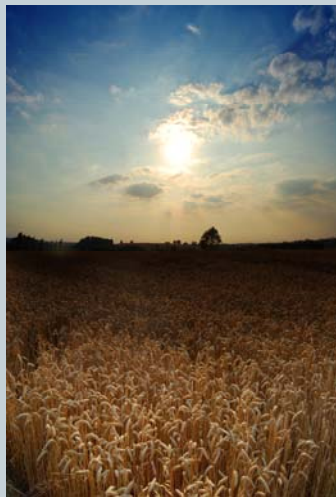
1. Default has occurred in the Contract for Deed ("Contract") dated \_\_\_\_\_, as Document Number \_\_\_\_\_, (month/day/year)  
Page \_\_\_\_\_, in the Office of the  County Recorder  Registrar of \_\_\_\_\_ (check the applicable boxes)  
in which \_\_\_\_\_ (insert name of \_\_\_\_\_)  
as seller, sold to \_\_\_\_\_ (insert name of \_\_\_\_\_)  
as purchaser, the real property in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

### Disadvantages:

- Buyers risk losing all money paid (equity) if contract for deed is canceled
- For buyers, can be canceled more quickly than a mortgage can be foreclosed—same protections not available
- Requires ongoing responsibilities from seller

## Other Lease Issues

- **How to get out!**
- **Consequences of landowner bankruptcy**
  - Generally, tenant can stay until end of lease term, but may have to assert rights, pay rent to new owner. Best case – put in lease.
- **Consequences of tenant bankruptcy**
  - LL can get priority lien but have to perfect
- **Subletting**
- **Default**



## Review: Analyze & Negotiate



- **Read the entire lease.**
- **Using a checklist, check for “danger zones.”**
- **Decide what you need to change; cross out or write in terms and negotiate.**
- **Everything is theoretically negotiable; need not accept all “boilerplate.”**
- **Get everything in writing.**

## Review: Analyze & Negotiate



- **Legal counsel worthwhile.**
- **Sample or template leases are a good place to start. Getting that start can save you time and money when you bring it to an attorney.**

## Farm Lease Resources

- **Sustainable Ag Land Tenure (SALT) Initiative**
  - [sustainablefarmlease.org](http://sustainablefarmlease.org), Sustainable Farm Lease Guide
- **Iowa State Extension Ag Decision Maker**
  - Sample leases, [extension.iastate.edu/agdm](http://extension.iastate.edu/agdm)
- **Ag Lease 101 – North Central Farm Management Extension Committee: <http://www.aglease101.org/>**
- **The Land Connection, [thelandconnection.org](http://thelandconnection.org)**
  - Guide for Land Seekers (resource list)
- **California Farm Link, [californiafarmlink.org](http://californiafarmlink.org)**
  - A Farmers' Guide to Securing Land
- **Land For Good, [landforgood.org](http://landforgood.org)**
  - Sample leases
  - A Landowner's Guide to Leasing Land for Farming
- **Farm Transitions Toolkit, LSP**
  - [landstewardshipproject.org](http://landstewardshipproject.org), FLAG

## THANK YOU!



### Questions?

**Phone:** 651-223-5400  
**Hotline:** 1-877-860-4349 (for MN farmers)  
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