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Farmland Leases

A farmland lease is a contractual agreement by which a landowner transfers to a tenant the right to use and possess farmland for a limited period of time. Generally, in exchange for these rights, the tenant agrees to pay the landowner rent in the form of either a cash payment, a share of the crops produced, or the income from livestock sold.

While many farm leases are done with a handshake, this practice is not a good idea because there is no written agreement in the event of a disagreement between the parties. A **well-written lease agreement** will make the lease terms clear and leave less opportunity for misunderstanding and reduces the likelihood of a potential conflict between a landowner and a farmer.

Common Lease Options

When considering the type of lease, consider the tenant's business' objectives and overall business experience, including type of crops to be grown, targeted duration of lease and whether land can be farmed by tenant on a standalone basis. Selection of the types of leases below depends on these factors, including how much risk the farmer wants to take on with respect to seasonal crop viability and the market generally.

Common Types of Leases

Fixed/Cash: Tenant pays the landlord either a cash sum per acre or lump sum for the rights to use the land and other farm resources.

Flexible: Tenant pays the landlord either a cash sum per acre or lump sum for the rights to use the land and other farm resources but amount paid can fluctuate up or down depending on crop yield, market price, or a combination of both.

Crop-Share: Tenant pays the landowner a certain percentage of harvested crops or livestock sold; in return, a landlord allows the tenant to use the land and may pay a percentage of certain input costs.

Leasing Terms

When entering into a lease agreement for farmland, each party should be on the same page and share the same expectations for the tenancy and lease agreement. To that end, the lease agreement should be exhaustive to specifically detail all the rights that the farmer needs, so there are no surprises when the farmer begins its operations.

Key Elements of a Lease

Farmland lease agreements vary in size and design, but there are common farming practices, business arrangements, and general provisions that should be considered when drafting any lease for farmland. These agriculture-specific considerations include:

Description of Property. The property description in the agreement identifies the land both parties intend to be farmed. The lease should identify the land area, buildings, equipment and animals (if applicable).

Names of the Parties. The lease must be signed by the actual owner(s) of the property or those with proper authority to bind the property to the terms of the lease. Failure to secure the signatures of the proper owners leaves the lease vulnerable to being voided by owners who did not consent to the agreement.

- If property is held in a trust, the trustee must sign.
- If land is held in a limited liability company, the person with management authority must sign.

Lease Term. Farm leases exist in many different forms with varying term lengths. Some are year-to-year leases and require annual re-negotiation. Others are structured as multi-year leases. A short term may have advantages for farmers that are looking for flexibility (e.g., farmers that plan to buy their own land in the near term or to explore the business of farming without a long term commitment), whereas a longer term lease, while often more complex, gives the farmer peace of mind to know it has access to farmland and allows the farmer to make investments in the land over a longer timeline (e.g., soil health, season extending infrastructures, etc.).

Rent Payments. The rental payments and frequency depends upon the type of lease that is agreed upon (e.g., fixed/cash, flexible, crop-share, etc.).

Farm Equipment. If the landowner grants the farmer permission to use farm equipment, this should be included within the lease. Details outlining where and how the equipment should be stored, and whether the farmer is allowed to bring in outside equipment should be included as well.

Permitted and Prohibited Land Uses. The lease should specify allowable and prohibited uses of the real and personal property, including a description of what the landowner considers appropriate "agricultural uses" of the land.

If part of the farmer's business plan, the lease should specifically identify any ancillary uses of the farmland planned by the farmer, including agrotourism or retail produce sales.

The landlord may negotiate to impose certain prohibitions with respect to treating the land. For example, (i) they may impose requirements intended to avoid the introduction of disease of invasives, and/or (ii) they may require that the farmer use organic practices if the land is certified organic and/or they may require the farmer to notify the landlord if certain events occur that impair that certification (e.g., pesticide field drift or flooding that might contaminate the land).

Default. 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 specify what constitutes default by either the tenant or the landowner.

Typical defaults under a lease involve failure to pay rent, failure to maintain liability or casualty insurance, and failure to comply with state and local regulations. Default may also involve failure to keep the property in good repair or engaging in a use prohibited by the lease.

If either party fails to cure a default and all attempts to resolve the matter fail, the defaulting tenant can typically be given notice of termination of the lease and a period of time in which to leave the property.

Maintenance and Repair: Maintenance of property can be allocated between the tenant and landlord, including responsibility for routine repairs and those caused by extreme weather events or fire.

Capital Improvements**:** The lease should specify what is permitted in terms of constructing improvements beyond ordinary maintenance and repair (e.g. a barn, fences, etc.). Questions to be answered in the lease include: can the tenant build what they want? do the improvements become the property of the landlord upon expiration of the leases?

Insurance: if applicable, the lease should set forth what insurance requirements are required from each of the landlord and farmer (and who is paying).

Termination: Most farmland 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. Given that the harvest is so central to the farmer's goals, the farmer should consider negotiating the right for no termination until after the harvest or rights for the farmer to harvest with a certain period after lease termination. The lease should also specifically clarify what happens in the event of a sale of the farmland (i.e. does the lease terminate or is it assumed by the purchaser as the new landlord?). The farmer may consider negotiating for a right-of-first-offer or right-of-first-refusal with respect to a sale of the farmland if it has any intentions of wanting to purchase the farmland.

This guide was generously prepared by Goodwin Proctor LLP.

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