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Frequently Asked Questions on Sustainable & Long-Term Leases in Minnesota

Q: Should my lease be in writing?

A: The answer is almost always yes. A written agreement can act as a roadmap for the landlord-tenant relationship, especially if a dispute arises. Also, real estate (land) leases for **more than one year must** be in writing. If a lease for over one year is not in writing, it will generally not be enforceable in court.

If your lease is for **exactly one year**, or **less than one year**, the law does not require it to be put in writing. A lease for less than one year can be orally agreed to between a landlord and tenant (often called a “handshake” agreement), as long as the landlord and tenant agree on basic terms (see below). However, if you end up in a dispute without a written lease, it is hard to prove what the terms are because it can become a “he said-she said” situation. Also, note that the term “year” refers to a calendar year of 12 months, not a crop year.

Finally, remember that if your lease is in writing, any verbal agreements that are not included in the written lease will not be enforceable.

Q: What should my lease look like?

A: Written leases do not have to be formal, but a lease should contain at least the following **basic terms** in order to be legally enforceable:

- Landlord and tenant names
- Description of the land to be rented
- Rent amount (\$)
- Usually, signatures of both the landlord and tenant

An easy way to create a written lease is to send the landlord a letter confirming the terms of an oral agreement. In the letter, ask the landlord to respond within 10 days with any objections. Also, **any changes to a lease should also be put in writing**. Oral changes to a written lease are generally not enforceable in court.

Q: What are the benefits to the landlord of a long-term lease?

A: The benefits are many. They include:

- Reduced transaction costs, since the lease need not be renegotiated every year.
- Improved tenant security, which encourages tenants to make investments that will add value to the property.

Q: What are the disadvantages to the landlord of a long-term lease?

A: Disadvantages include:

- External factors, such as market prices or natural disasters, may cause the landlord to wish to change the terms of the initial agreement.
- It could lower the market value of the land if the landlord decides to sell the land, as the lease would be binding on new owners.
- The landlord may not want to be bound to a long-term relationship with a tenant he or she does not know.

Q: How long should a sustainable farm lease last?

A: It depends on the parties' needs and goals. Most leases run from year to year. However, a longer term lease (for example, three years or more) allows a tenant to invest in sustainable practices, which in turn can lead to increased soil health, higher crop yields, and added value to farmland. Also, tenant farmers new to a particular piece of land will often need a few seasons to determine how to coax the best yields from their unique location. Higher yields can translate into increased profit for both landlords and tenants via flexible rent provisions (see below).

Landlords and tenants can also use an automatic renewal clause to help encourage a long-term relationship. Finally, note that the Minnesota Constitution limits the length of farm leases to 21 years, so a lease for an indefinite period of time would likely not be enforceable in court.

Q: What are some types of leases to consider?

A: There are generally three types of leases: cash rent leases, crop-share leases, or flexible leases. Cash leases, where the tenant pays a fixed price for the rental of the land, are the most common, and typically are for only one season. Crop-share leases allow the landlord and the tenant to share in the risk and the benefits, with both contributing to input costs and both receiving a share of the crop. Flexible leases provide landlords and tenants with some additional tools that can incorporate sustainability provisions.

Q: Are there leasing tools that can be used to incorporate rent flexibility and risk sharing to encourage longer-term leases and investment in sustainable practices?

A: Yes. There are many options, but here are some common types of lease provisions that can encourage longer leases by allowing the rent to change based on land values, crop yields, input prices, or other factors. Adding rent flexibility can help encourage a landlord to sign a longer-term lease by ensuring the landlord doesn't get locked into a lease that does not reflect the value of the property if land value, yields, or crop prices increase. Similarly, flexibility based on yield and revenue can make a tenant feel more comfortable about making a substantial financial commitment in a risky, weather-based, and market-dependent farm operation.

- **Flexibility options for cash leases:**

- * **Rent Adjustment Index.** This is typically used with cash leases, to encourage a long-term lease while addressing concerns about not being stuck with a fixed rent price when external factors that affect the rent change. The rent changes (annually or otherwise) based on agreed-upon factors (e.g., the consumer price index or a formula which could include commodity prices, land values, and input prices). It is important to agree in writing about what factors will be used to adjust the rent, as well as **how** (what market) and **when** (exact date) the prices or values will be calculated.
- * **Cost-Sharing Via Rent:** This could include "graduated rent," where rent rises each year as the tenant gets to know the land and increases soil health. Rent could also be reduced just for the first year or so, or it could be reduced to reward specific practices—such as organic certification or soil erosion practices.
- **Crop-Share Lease:** This is a traditional method of sharing risk. Rent is a specified share of the crop, which takes both farm yield and market price into account. **Input costs are usually shared as well.**
- **Flexible Leases:** These can be structured any number of ways, including a base rent plus a bonus, based on crop yields (county yield average, last year's yield, actual yield), crop prices, or farm revenue (a combination of yield and price). Again, it is important to agree in writing how these variables will affect the rent. Using farm revenue as the flexibility factor is probably the safest route for a tenant.

Each of these flexibility options can be individualized to fit a particular landlord-tenant relationship. As the details will matter immensely, it is best to have these types of flexibility provisions **in writing**.

Note also that basing rent on actual yield and/or entering into a crop-share lease can have an impact on USDA farm program payments because the landlord could be viewed as a part-operator. This could also cause the landlord to be viewed as self-employed, which has tax, estate planning, and Social Security payment

implications. Be sure to consult with the USDA Farm Service Agency and an attorney before using those mechanisms to adjust rent.

Q: How can a lease encourage sustainable practices?

A: A landlord can agree to reimburse a tenant for the cost of improvements required for sustainable practices, could agree to share the cost of improvements, or could reimburse the tenant for any unused portion of the improvements at the end of a lease. Legally, the term “improvements” usually refers to permanent structures built on the land (such as a house, barn, or certain types of fencing) that generally become the landlord’s property after the lease is over. Sharing the cost of improvements protects the tenant against losing the capital and effort invested after the lease ends. Landlords can also include a lease provision requiring approval prior to any construction.

Landlords can also agree to share the cost of implementing sustainable practices, which can make tenants more willing to try alternative methods. Additionally, provisions requiring periodic communication (letters, emails, phone calls) or tenant reporting (sending copies of new Organic Systems Plans, FSA reports) can help solidify a landlord-tenant relationship and assure the landlord that the land is being properly managed.

Q: Can a tenant enroll in conservation programs?

A: Generally yes, although the tenant’s participation may be limited by the lease terms. For example, a tenant cannot enroll rented land in any program that imposes permanent easements, such as the Wetlands Preserve Program. But if a program requires participation for a certain number of years and the lease is for at least that long, generally a tenant can enroll the land in the conservation program—with the consent of the landlord.

Q: Can a landlord require a tenant to use sustainable practices?

A: Yes. For example, a conservation plan developed with the USDA Natural Resources Conservation Service (NRCS) could be incorporated into the lease, requiring both landlord and tenant to comply with the plan. Additionally, threshold and monitoring provisions could also be included in the lease to provide sustainability standards, such as acceptable levels of soil erosion. Provisions can also be included to address other concerns and practices, such as the removal (and ownership) of crop residue, conditions for manure spreading, and compliance with environmental laws and regulations. Tenants and landlords may also wish to include an agreed-upon statement of purpose stating that the purpose of the lease is to encourage good stewardship of the land.

From the tenant perspective, it may be wiser to agree to a lease that requires certain practices instead of specific results because circumstances beyond a

tenant's control could make certain results (such as soil erosion levels) impossible to meet.

Some typical conservation provisions can be found at:

<http://sustainableaglandtenure.com/2010/10/key-considerations-for-a-sustainable-farm-lease-agreement/>.

Q: What is a ground lease?

A: A ground lease is a long-term arrangement (typically more than 10 years) where a tenant owns “permanent improvements” on the farm property, such as a house, barn, or fencing—but rents the land. Sometimes a tenant might also own a small amount of land, such as the yard in front of a house. At the end of a ground lease, the improvements are sold back to the landlord leasing the land, or to the next tenant. This kind of lease allows a tenant to gain some equity, while not requiring a financial investment that a tenant cannot afford.

Q: What else should be considered when making a lease agreement?

A: It is impossible, in this short document, to include everything that landlords and tenants should think about, but other important items include:

- How to get out of the lease if circumstances make it difficult for either the landlord or tenant to continue with the lease arrangement.
- What happens if the landlord goes into bankruptcy. Generally, federal law allows tenants to remain on a bankrupt landowners' property until the end of a lease agreement, even if the land is sold. However, it is best to put this in writing in case a tenant is forced to assert his or her rights during a landlord bankruptcy.
- Whether there are any zoning or easement restrictions on the property.
- Whether it makes sense to invest in hiring a lawyer to draft or review a lease. Legal counsel is often a worthwhile investment for landlords and tenants entering a long, complicated, and potentially life-altering agreement.

The most important factor in a successful leasing relationship is clear communication of both the landlord's and the tenant's expectations.

Q: Do you have a standard form lease I can use?

A: Because each piece of land is different and the expectations of the landlord and tenant are different in each situation, there is no one-size-fits-all lease. It is critically important that you discuss your expectations before entering into a lease and incorporate those expectations into your lease. That said, there are some sample leases you can review for ideas at:

<http://sustainableaglandtenure.com/2010/06/form-leases/>.

ADDITIONAL RESOURCES

See the Sustainable Farm Leasing Quick Reference Guide and www.sustainablefarmlease.org (a project of the Sustainable Agricultural Land Tenure Initiative) for more information and ideas on rent flexibility, risk sharing, and encouraging sustainable practices.

- **Sustainable Ag Land Tenure (SALT) Initiative**
sustainablefarmlease.org, Sustainable Farm Lease Guide
- **Iowa State Extension Ag Decision Maker**
Sample leases, extension.iastate.edu/agdm
- **Ag Lease 101 – North Central Farm Management Extension Committee:** <http://www.aglease101.org/>
- **The Land Connection, thelandconnection.org**
Guide for Land Seekers (resource list)
- **California Farm Link, californiafarmlink.org**
A Farmers' Guide to Securing Land
- **Land For Good, landforgood.org (sample lease)**
- **Farmers' Legal Action Group, 651-223-5400**
- **Farm Transitions Toolkit, forthcoming, LSP**
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