



## Leasing Fact Sheet

The following information is intended to provide information on many, but not all, issues confronting landowners and prospective tenants of their lands and buildings. The material is educational in nature and is not intended to provide legal or professional advice to its readers, or to act as a substitute for such advice. Anyone who desires to get such advice should seek it from independent professionals before acting on any information contained in this article. The information is designed to help readers understand the nature of the legal issues involved in deciding to lease agricultural land and buildings. Please consult your family attorney for more information.

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## 1. What is a lease?

A lease is a legal document. It describes the agreement between an owner and a tenant who combine their individual resources of land, labor, capital, and management for the purposes of agricultural production. A lease also describes how they will share the income from the land.

The goal in leasing is to put the care of the farm in someone else's hands and still have your needs met. Therefore, it makes sense that you want a good lease. However, for the tenant and the landowner to be satisfied and for the business relationship to continue, the lease must be useful. A useful lease will arrange a fair division of income and expenses between landowner and tenant. It also allows the tenant to farm profitably. The lease provides assurance that the tenant will be able to continue the lease for a period of years but also gives assurance to the landowner that the value of the land will be preserved. The lease also ensures that all legal requirements are met, measured, and defended. An effective lease should clearly spell out the duties and rights of the landowner and the tenant. It should also anticipate possible problems and describe how each will be resolved.

## 2. Are there different types of leases?

Yes there are. Some examples and their explanations include:

Lease type	What is it?
Crop-share	The crop and certain input costs are divided between the operator and owner (often 50/50)
Cash rent	A lease arrangement in which the operator makes a cash payment to the owner for the use of certain property, pays all production costs, and keeps all the income generated.
Livestock share	The owner and operator contribute capital, share certain production expenses, and share the production of livestock.
Variable/ Flexible cash rent	The annual cash lease payment is flexible depending upon yields and/or prices. Such flexible payments are frequently combined with a fixed base to guarantee a minimum lease payment.
Renewable	An opportunity for renewal is included in the lease upon review by the landowner and tenant. This includes a specific date that the renewal must be completed.

### 3. Written vs. Verbal agreement

While farm leasing is common, putting the lease agreement in writing is not common practice. It might be uncomfortable or unheard of to do so, but both parties will benefit by putting the agreement in writing.

Parties operating under a verbal agreement often make differing assumptions, do not address all of the burdensome details a lease arrangement entails, or do not remember precisely the terms of their verbal agreement. Verbal agreements are only enforceable up to one year. After a year, the agreement must be in writing and signed by the parties.

However, a written agreement is recommended for many reasons. First, it encourages the owner and tenant to agree upon the details so that they have common expectations. It also serves as a record both parties can turn to if they disagree. A clear, written record helps resolve disagreements fairly and protects both parties. A written lease also provides a valuable guide for heirs if either party dies. Both parties should consult their attorneys and accountants to draft or review the lease and consider the implications for farm program payments, Social Security benefits, taxes, and security interests. A carefully planned written lease will provide its worth for both the landowner and the tenant. A handshake is not enough!

### 4. What happens to a crop that is in the ground when a lease expires?

A crop that is planted but not harvested when a lease terminates is referred to as an “away going crop.” Generally, a tenant does not have the right to an away going crop, since it would not be fair to allow a tenant to benefit from the proceeds of a crop that the tenant knew could not be harvested before the expiration of the lease period.

However, there are exceptions. If it is customary practice for that region to have the tenant harvest a crop after the lease terminates, the law will consider that custom as part of the lease agreement, and the tenant will have the right to the crop. In addition, if the landowner stands by and allows the tenant to plant the crop without objection, the landowner cannot later claim the right to the crop. Where the landowner knows of the planting and does not object, the tenant will be permitted to harvest the crop after the lease expires.

### 5. How are Social Security benefits and income taxes affected by leasing farmland?

The federal government does not classify lease payments as self-employment income if the landowner does not materially participate in the operation. The landowner does not pay self-employment tax on the lease income. If the landowner wants the income to qualify as self-employment income, the landowner must materially participate in the operation.

Social Security benefits may decrease if a landowner materially participates in the farming operation. Reduction or loss of Social Security benefits in this situation is also dependent upon the age of the landowner and other income received. The landowner should consult the current Social Security regulations for age and income limits.

## 6. Can I include government conservation programs in the lease?

Conservation leases can include provisions for government programs upon agreement between the landowner and tenant. These programs often require specific land use, management, or cropping practice to be eligible, which may require extra time or effort on behalf of the landowner or tenant.

## 7. Will I lose my government conservation program payments if I lease my land?

For federal farm programs, a producer must meet eligibility requirements to receive program payments. The producer must be a “person” who is “actively engaged in farming.” A lease arrangement raises the issue of whether the landowner is still “actively engaged in farming,” which requires certain commensurate contributions of land, capital, equipment, labor, and/or management which are at risk. As a general rule, a landowner leasing land on a cash rent basis is not “actively engaged in farming.” On the other hand, a landowner leasing on a crop-share basis may be able to maintain farm program payments if his or her profits are based on production, are commensurate with his or her contributions to the operation, and are at risk. A landowner concerned about losing farm program payments should consult with the Farm Service Agency or Natural Resource Conservation Service about current eligibility requirements. Additionally, the lease agreement should address farm program payments.

## 8. What is a conservation lease, and why should I use one?

A conservation lease is a lease with provisions for the tenant to implement conservation practices on the land to protect the soil, air, water, plants, and animals. A conservation lease encourages cooperation between tenants and landowners to obtain and maintain needed conservation practices on a rented farm.

## 9. What are the typical conservation provisions for farming practices?

A farm lease should include provisions for soil conservation practices, fertilization and nutrient applications, noxious weed control, and crop rotations. Each provision should address which party is responsible for the practice, restricted practices, or crops, sharing of crops for practices considered capital expenditures, and reimbursement to the tenant for unrecovered costs. There is more information on the parts of a conservation lease as well as special provisions to include in subsequent fact sheets on this website.

## 10. I have recreational land. Would a conservation lease be useful?

A recreational lease can be used for individuals or groups to use the land during a set time. This includes hunting, fishing, camping, horseback riding, snowmobiling, and cross-country skiing. These leases can help control trespassing problems. Recreational leases involve liability risks that need to be outlined between the two parties.

### **11. What types of practices can be included in conservation leases?**

Cropping practices such as no-till, mulch till, contouring, rotational cropping or grazing, maintaining ground cover and more can all be included. Permanent practices such as the implementation of terraces, waterways, buffers, windbreaks, and more can also be included. However, if these permanent structures are not already implemented, then considerations for the costs of installation need to be worked out between the tenant and landowner. Also a depreciation schedule of the costs over a number of years should be included, so the tenant can recover some of the costs if the lease is terminated.

### **12. How will a conservation lease affect my tenant?**

The purpose of conservation leases is to encourage cooperation between tenants and landowners to obtain and maintain needed conservation practices on a leased farm. Conservation practices and improvements will not be made unless agreed to in advance and the tenant has the necessary machinery and management ability. A tenant is not likely to make an important contribution to soil conservation unless additional costs are shared or the tenant is assured repayment of an unexhausted value in case the lease agreement ends.

Meeting conservation goals may restrict the tenant's management options. The tenant's risks will increase if the methods he or she can use to respond to weather, pests, and other circumstances are limited. This may result in lower yields or higher production costs. Therefore, landowners should make the lease agreement equitable so that the costs and risks associated with required conservation practices are not borne entirely by the tenant. This could be done by lowering the cash rental rate or selecting a type of lease that distributes risk equally between the landowner and tenant. Flexible cash, crop share, and livestock share leases divide both the yield risk and the production-cost risk between the landowner and tenant. Percentage share leases for crops and share of the gain leases for livestock distribute yield risk, but not production-cost risk, between the landowner and tenant.

### **13. Who do I need to work with to create a conservation lease?**

Talk to your lawyer, banker, and insurance agent. Your family attorney knows your situation and knows how to protect your interests.

### **14. Conservation plans- what are they?**

Maintaining conservation benefits on leased land will be easier if the landowner has defined his or her conservation goals. Ideally, the landowner's goals should fit into a comprehensive, long-term conservation plan. A professionally-designed plan can help establish conservation goals. Examples of professionally designed plans include the Natural Resources Conservation Service (NRCS) plans required for participation in federal farm programs and various whole-farm planning approaches. NRCS works with landowners, but landowners do not have to participate in federal farm programs to receive assistance.

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