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Making Your Farm Tenant/Landlord Relationship the *Leased of Your Concerns*: Farm Lease Dos and Don'ts

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Leases for land are an excellent way for property owners and farmers alike to make use of great space. Most who work in farming are familiar with the leasing of land, and there are many types of land leases, but this resource identifies a few of the general considerations to include in them, including some things to think about before signing anything. It's organized into do's and don'ts for your farm lease, so know what to look out for and you can hit the ground running.

DO: Get it in writing

We know the pride in an agreement made with a handshake but putting your agreement in a written lease signed by the landowner and the tenant will help make sure everyone is on the same page, nothing gets lost in translation, and you have something enforceable and protects you from getting booted off your land. Memories fade, so having a place where you've clearly stated the arrangement benefits everyone involved. This will also help enforce the lease because in the event there is a dispute, it won't be one person's word against another's.

DO: Separate your Liability and Put Land Security Measures in Place

There are many ways you as a tenant or landlord can [protect yourself from liability](#) (or being held legally responsible).

- If you rent land, a solid lease is an important place to start. You can also [create an entity like an LLC](#) so you can build protection from personal liability for anything you do within the scope of your farm business. If you do create an entity, you'll want to make sure your lease is between the landlord and your entity.
- There are also laws in place intended to help protect liability for certain activities, such as [agritourism](#).
- Landowners, even if you don't intend to lease your land to another, it may make sense to separate your land liability from your farm business liability. This can be done through a lease between you as the landowner and your farm business. The lease must be written and provide evidence of the separation, and rent has to be reasonable so it operates like a legitimate lease. A \$1 lease won't cut it.
- And of course, both parties should get insurance that matches and covers their needs and potential liabilities.

DO: Your Due Diligence

Tenants and landlords alike should do their research on the land before entering into a binding lease. Both should check the zoning of the land to make sure the intended use of the space is allowed on that land. Similarly, make sure you understand the other rules and regulations in that area you may be required to follow. For example, if a tenant intends to use that space for weddings on weekend evenings, is there a noise ordinance in place that would keep the tenant from doing this? What are [other legal obligations](#) for hosting events? If a tenant isn't able to make rent because of such an ordinance, nobody benefits.

- Tenants should research all of your options as far as leases in the area go. Talk to others leasing land, and check that you're being asked to pay a reasonable rate with reasonable responsibilities being asked of you.
- Another important aspect is making sure the land works for you. Test the land's soil, test the water, and make sure you have the resources available that you will need for your operation, (or you have a way to get them – and account for this in the lease – if you don't). It's also important to talk through with the landlord who is responsible for repairs,

replacements, improvements, and how the improvements you might be making to the land will be valued in the long run.

- Landlords, you'll want to make sure you truly understand your property, and what exactly you own. Do you own the mineral or gas rights underneath your land? You will want to make sure your lease addresses who has access to those resources, and if you don't own them, you may want to make that clear to your tenant that they are not yours to give.

DO: Include important and situation-specific key terms

The best leases are the ones that are reflective of your unique, specific circumstances. We recommend working with a lawyer to help you ensure your lease is enforceable, legal, and truly accounts for the important provisions the landlord and tenant want to include, as well as some you may not have thought of.

Here are a few key terms to include in a lease:

- Start with the basics: Who, What, Where, When
- How long will the lease last?
- How will lease renewal be handled?
- How can a tenant or landlord terminate?
- Any limitations on the premises' use?
- Production: What, when, where, how?
- Permitted activities on the land
- Landlord access and rights of way
- What facilities are included in the lease?
- What happens if something is damaged or reduced?
- What about storage, irrigation, electricity, trash?
- Who pays for utilities? What about taxes?
- Who fixes or restores something when it breaks?
- Can the tenant make improvements? Can they build something new?
- When, how, and by how much can a landlord raise rent?
- Can the tenant sub-lease to other tenants?
- You'll also want to have a conflict resolution procedure.
- And more

DON'T: Fail to Communicate

In leasing land, communication with your tenant or landlord is very important. This will always be your first line of defense and your best place to start if you're experiencing an issue. Remember, the lease is a place to start to outline obligations and responsibilities, and you may be able to work things out without having to go to court if there are clear communication terms on how to do this.

DON'T: Wait to draft and sign

"We'll deal with that later" should not be in your vocabulary in the context of a lease. We know when you've found the perfect place, it's easy to dig right in. We get it, of course. The seasons come and go quickly, and you must work when you can or you could lose an entire season. But you want to be diligent and get it in writing *before* you start work because it's worse to lose all that work if something doesn't work out or isn't enforceable.

DON'T: Let your lease get outdated or expire

Relationships evolve. Maybe your lease says one thing, but that's not the way you end up doing it in practice. That's okay! For example, maybe the landlord has a great tractor they've let you use without having to pay extra even though the lease doesn't account for it. Or, maybe when you signed the lease the two of you were basically strangers, so you kept a lot of protections in the lease, but now you've developed a stronger relationship and want to have a few more options for each other. Leases can be updated through amendments and addendums, and while course of performance – like always loaning the tractor and asking nothing in return – can be a solid contracts defense, it's better to get the change and the understanding in writing. Additionally, you may account in your lease for what happens on when the lease ends and how to renew the term, but whether you do or don't, keep apprised of when it expires so you can come to a new agreement that best reflects the relationship as it has evolved.

DON'T: Be afraid to talk to a lawyer

Lawyers are there to [help you through all of this](#). We can draft and help negotiate your lease, and we can be there for you when something goes wrong, you're confused about your rights or obligations, or you just need someone in your corner.

Check out our many [blog posts on food and agriculture](#) and our [free resources available](#) in our resource library to help better understand protecting your farm and land, including our free [Legal Worksheet for Farmers](#).