



Farmland Leasing for Private Landowners: *A Short Guide*

Prepared by the Non-Farming Landowner
Task Force of the Land Access Project,
a Collaborative Project of Land For Good



Land Here! Assuring Land Access for New England's Beginning Farmers ([The Land Access Project](#)) is a regional collaborative focused on access to farms and farmland. The project is directed by Land for Good in partnership with over two-dozen organizations and agencies in six New England states. The Land Access Project has five task forces. The Non-farming Landowner Task Force members include:

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Is this guide for you?

Are you considering making your land available for farming? This guide is for landowners with properties that are—or could be made—available for farming. Offering your land to a farmer can be a win-win strategy if you do it in a well-planned fashion. Leasing your land can help you meet your stewardship goals with multiple benefits to you, your land, and your community.

After you've thought about your goals for your land and have a good basic understanding of what you have to offer, you're ready to take the next steps. This guide is a brief introduction to the issues you need to think about. It will help you learn about the issues involved in renting land to a farmer. You can find more detailed information (along with lease samples) in the "Landowner's Guide to Leasing Land for Farming" (Land Access Project 2012). If you are at the exploration stage, Land For Good's "Making My Land Available for Farming: Where Do I Start?" is a good place to begin! Those and other resources are listed at the end of this guide.

Why make land available for farming?

Land is an essential element of farming. The past decade has brought a welcome resurgence of support for New England farms as demand for locally grown farm products has greatly increased. However, after a century of significant farmland loss throughout New England, access to affordable, productive farmland is one of the greatest challenges that New England farmers face.

New market opportunities in agriculture are fueling higher interest in farming as a career and spurring beginning farmers to start new farms and existing farmers to expand their operations. Whether it's 2 acres or 50 acres, land that is owned by landowners who do not farm it can offer farmers significant opportunity to start or expand farm businesses and increase local farm production at the same time. By using this guide and the resources listed below, we hope that you will be on your way to creating a successful relationship with a farmer.

What is in this guide?

The following sections are best considered sequentially, but you can click on each section in any order. This guide covers:

1. [Types of farming](#)
2. [Is your community farm friendly?](#)
3. [Regulatory issues](#)
4. [Liability and insurance](#)
5. [Types of leases](#)
6. [Elements of a lease agreement](#)
7. [Finding a farmer](#)
8. [Resources](#)

1. TYPES OF FARMING

Agricultural operations are as diverse as the types of food we eat. Some farms are set up to grow only a few crops, some to raise animals, and others to produce a multitude of products. Some farms grow Christmas trees, berries or sugar maples. Each business is different and is run differently. Most farming businesses are private; some are non-profit organizations, and others are run as cooperatives. Some farms market their produce directly to consumers, others through a wholesale distributor, and others through local supermarkets, for example.

We mention the wide variety of New England farm operations to encourage you to explore the kinds of farm production that will fit best with your land and your goals. Your property may be suitable to more than one type of farming activity.

Here are a few examples of farm enterprises

- **Vegetable or flower production:** Vegetable farming activities take place primarily from spring to fall and normally require better soil than hay or pasture. They typically involve tilling or other mechanized processes in the spring and throughout the growing season to prepare, plant, and maintain crop beds. Irrigation is necessary to protect plants against drought. Depending on the crop, common farm activities throughout the season include weeding, harvesting, pest and disease management, and cultivation. Farmers may market produce at a farmers market, CSA, or farm stand. They may sell one or more crops wholesale. Season extension in a hoop house or greenhouse is useful to start seeds in the spring and extend available times for growing food. Deterrents may be needed to prevent crop destruction by deer, raccoons, crows, and other pests.
- **Animal farming:** Raising sheep, goats, beef or dairy cattle, horses, or poultry requires a reliable source of water, adequate fencing, appropriate shelter, and suitable pasture adequate to maintain the animals without soil deterioration. Farmers need to keep their animals safe and in good health, preventing them from straying onto roads or neighboring property. Animals for meat must be slaughtered and processed, typically at an off-farm facility. Farmers retail or wholesale their animal products. Some farmers produce “value-added” products such as cheese, sausage, and ice cream.
- **Berries, fruit, and trees:** Crops such as berries and trees are perennial, meaning that after one planting they continue to produce fruit and seeds for years. These plants

can take several years and considerable investment before they are productive enough for a farming business. A farmer must have assurance that he or she will be on the land for a long time before planting perennial crops. Yearly tilling is not necessary, so sloping land could be suitable for fruit and nut production. This type of operation often requires less daily maintenance throughout the growing season than vegetables or animals.

- **Diverse farms:** Growing plant crops and raising animals together has become more common as the sustainable farming movement expands. With an integrated system, farmers rotate animals and plant crops to take advantage of the way both can complement each other and the land. Diverse farms rely on multiple crops and value-added products, often in combination with animals. Some diverse farms conduct educational programming or agritourism activities. Some carry out processing on the farm.

2. IS YOUR COMMUNITY FARM FRIENDLY?

It is important to think about your community and neighbors when assessing your land’s viability for farming. If there are other farmers around, then it is likely that your area is “farm friendly” and your neighbors understand the business of farming. However, if you’re in a semi-urban area that is more developed, your neighbors may be unfamiliar with farming realities. It is best to inform your neighbors of your plans to open your land to active agriculture rather than waiting for a neighbor to complain about some aspect of the activity. A well-run farming business can be harmonious with other land uses and can offer many benefits to neighbors and the community.

The “farm friendliness” of a community is also important to the farmer. If there are other farmers in the area, it is more likely that there are farm business services like supply stores and machinery repair shops nearby. Communities with a buy-local campaign or a farmer’s market, for example, show their support for local agriculture and can contribute to the success of a farm business. Even if your community isn’t fully on board, your land may still be a viable place for a farmer. Learning about farming issues in your community will help you attract the right farmer.

3. REGULATORY ISSUES

Many federal, state, and local laws govern agricultural activities. These laws specify which practices are prohibited or require permitting, and what agencies are responsible for reviewing permit applications and enforcing regulations. They can be grouped into several areas relevant to a non-farming landowner.

- **Surface and groundwater quality** is regulated by the U.S. Environmental Protection Agency and sometimes by state departments of agriculture or departments of environmental protection. Permits may be required for certain agricultural activities, including water withdrawal.
- **Wetlands** are also regulated by local, state or federal agencies. Laws and regulations determine whether an area constitutes a wetland and whether and how it can be used. In some New England states, local conservation commissions regulate wetlands and waterways.
- **Air pollution** can be of concern to agricultural operations. Normal agricultural practices may produce pollutants, and other so-called “nuisances” such as odor, noise, dust or flies are often allowed by states or locales through “right-to-farm” laws (see below).
- **Solid and hazardous waste disposal** on-site almost always requires a permit from state and federal agencies. Composting of manures, carcasses and other farm wastes may be allowed within specified limits or under a permit.
- **Right-to-Farm Laws** have been passed in all states in New England. They generally protect farmers from nuisance complaints (e.g. odors, noise), but with some limitations. Talking with your neighbors before establishing an agricultural operation on your land can go a long way toward preventing future disputes.

For a detailed description of agricultural laws in each state and level of government, consult the National Association of State Departments of Agriculture’s state-specific reports entitled Environmental Laws Affecting State Agriculture. Choose your state’s report in the directory and download at www.nasda.org/nasda/nasda/foundation/state/states.htm.

Ultimate responsibility to stay in compliance with those laws may reside with the landowner, so it is important to make sure that farmer tenants operate within the bounds of the law. Non-farming landowners can make sure that farmer-tenants are responsible and respectful caretakers of the land by

specifying in lease agreements that they must abide by all local, state, and federal environmental regulations (which they must in any case).

As part of a lease agreement, savvy landowners will ask the farmer to develop a plan for how he/she intends to care for the land and farm within the bounds of local, state, and federal environmental laws. This kind of conservation or stewardship plan might not provide a basis for legal enforcement, but it will give the non-farming landowner a good idea that the farmer has thought these issues through. It can also provide a framework for a partnership between the landowner and the farmer for care of the land.

4. LIABILITY AND INSURANCE

Private landowners often have liability and insurance concerns about leasing their property to a farmer. Landowners should take comfort to know that there are established mechanisms to protect farm property owners and to minimize risk, so this matter should not be an impediment to leasing to a farmer.

It is important to understand that once commercial farming activities start taking place on the property of a private landowner, a typical homeowner’s insurance policy will NOT cover those activities or the liability related to commercial farming. It is thus essential that the landowner require the tenant farmer to obtain his/her own liability insurance and to present the landowner with a Certificate of Insurance naming the landowner as an “additional insured” along with specifics on the location and description of the insured property. If there are multiple properties involved, each should be named in the policy.

By naming the landowner on his or her insurance, the farmer essentially shares the insurance with the property owner. In addition, when the landowner is named as an additional insured on the farmer’s insurance, the landowner will be notified directly by the insurance company if there is non-payment of premiums or if the insurance is terminated and is no longer in force.

An insurance professional should be consulted to determine the level of liability insurance that should be required of the farmer. A common level is a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate coverage.

5. TYPES OF LEASES

Before you search for a farmer, it is good to understand the various options for leasing your land. For instance, do you want a short-term or long-term commitment? Do you want cash or a different form of payment?

This section outlines some basic facts about farmland leases:

- Lease Term (duration of the lease)
- Payment Options
- Lease with Option to Buy

Lease Term (duration of the lease)

The term of the lease is the length of time the lease lasts. It is important to think about the number of years you want your lease to remain in effect.

Short-term Lease: A short-term lease is typically for one year, but could be for two or three years. A short-term lease offers both landlord and tenant maximum flexibility. It also can be a “trial period” for both parties. You also might not be sure about what you will do with the property down the road. You can try a different farmer or farming operation for your land if you don’t like the situation. However, it is not reasonable for a farmer to make long-term plans under a short-term lease. A farmer may not be as likely to invest in improving the soil, undertake conservation measures, or build structures if the lease will end before he/she can reap the business benefits of the investment.

Rolling lease: A rolling lease term is one in which the term rolls over annually. In other words, at the end of the first year of a five-year lease, the tenant still has five years to go. This is an attractive option for both landowner and tenant in many situations.

Long-term Lease: A long-term lease typically has a term of 5–10 years. Legally, a long-term lease can run for up to 99 years. Long-term leases are more secure, allowing farmers to make long-term decisions and possibly build equity in a property, but the agreements can be more complex. There are advantages for both parties.

Ground Lease: A ground lease is uncommon with private landowners. In a ground lease, the land is rented long-term to the farmer who purchases or builds some or all of the improvements (e.g. a residence or farm buildings) on the

leasehold. The advantage of this model is that the tenant is able to build equity. When the lease ends, the tenant can sell the improvements.

Payment Options

Cash Lease: You and the farmer agree to a set amount of cash that will be paid each year, typically by the acre. The farmer may prefer to pay a small portion of the annual rent at the beginning and a larger portion at the end of the season.

Crop/Livestock Share: Instead of a set amount of cash, the rent is a portion of the income from the crop. This is a way for you and the farmer to share risks and benefits. A crop-share lease can be a good option for beginning farmers who do not have much start-up capital. Sometimes the farmer and the landowner split the production costs and profits.

Flexible cash rent: Flexible cash rent is a hybrid of the cash and share models. In this plan, the parties determine a guaranteed base rent that is less than straight cash rent. In addition, the landowner receives a portion of the proceeds from the farmer’s sales. In a good year, both parties benefit. In a bad year, the landowner receives the base rent.

Lease with Option to Buy

Some landowner families plan to keep the land in the family “forever.” Others plan to sell the property at some point. A lease with a farmer can include provisions for that farmer to buy the property at some point in the future.

Right of First Refusal: With a “right of first refusal” clause in your lease, if you decide to sell the land the farmer gets a chance to buy it at your asking price before it goes on the market. This way, the farmer knows that the land cannot be sold out from under him/her.

Option Agreement: An option agreement in your lease guarantees a future purchase price and date. Sometimes, the rent can count toward the farmer’s purchase.

6. ELEMENTS OF A LEASE AGREEMENT

It is crucial that a lease or land use agreement be put in writing. A clear and sufficiently detailed lease agreement will help you maintain a good relationship with your farmer and resolve disputes that may come up. Always consult a lawyer before signing a lease.

- 1. Identification of the entities signing the lease.** Those include the tenant (the farmer using your land) and the landlord (the property owning entity). The parties to the lease can be individuals, a business entity such as an LLC or corporation, a trust, conservation organization, or town, for example.
- 2. Description of the property.** A detailed description of the land should go on record. It can include maps of the land, current conditions of the property, and existing farm infrastructure like barns, equipment, and farmhouses. It is usually advisable to cover a residence in a separate lease.
- 3. Term of the lease.** The lease should specify how long it will last, when it starts and ends, and whether it is renewable.
- 4. The amount and type of rent and how and when it will be paid.** This will specify whether the lease is for cash or a crop/livestock share.
- 5. Taxes and fees.** The lease should specify who will pay the various taxes and fees involved in farming that property, such as property taxes and permit-filing fees. Depending on the arrangement, the landlord might have to pay self-employment taxes on rental income.
- 6. Utilities.** The lease should specify who will pay for utilities such as water and electricity.
- 7. Entry of the landlord.** The lease should specify when you as the landlord have the right to enter the property and for what reasons.
- 8. Permitted and prohibited uses on the farm.** This important section of the lease can include types of farming operations (animals, vegetables, pasture), types of farming and stewardship practices, and certain activities like CSA pickup or farm stand sales that are allowed on the land. It also specifies what is not allowed such as removing trees or hosting public activities.
- 9. Responsibility for maintenance and repairs.** The farmer is usually in charge of routine maintenance such as annual repairs or painting. The owner is often responsible for major repairs and maintenance to roofing, water supply systems, or waste treatment systems. This is worked out in various ways between the parties.
- 10. Investments in capital improvements.** Capital improvement refers to the building of something new on the property. It also refers to fixing an existing system on the property that significantly increases the value and utility of the land. It can be challenging for a farmer to invest in capital improvements if the lease term is not long enough to allow him or her to profit from the investment. The lease should specify who is responsible and the procedure for deciding.
- 11. Liability and other insurance.** Typically, a landowner will require the tenant to carry adequate liability insurance, naming the landlord as co-insured.
- 12. Default Provisions.** These provisions specify what happens if either party does not adhere to the terms of the lease. They may stipulate a time period to remedy the situation. This section might include a dispute resolution process to resolve a conflict.
- 13. Condemnation or Casualty Provisions.** This section of the lease will spell out what happens if the property is condemned or is damaged by fire or natural disaster.

7. FINDING A FARMER

Finding the right farmer for your land is important. The process can take time. You probably will want to find someone whose business vision and farming practices match your goals for the land. In addition, basic compatibility and good communication are essential. Finding the farmer who is the right fit for your land and forming a mutually satisfying relationship involves “chemistry” as much as suitability.

There are many approaches to looking for a farmer. Various online listserves, land linking services, farm classifieds, and neighborhood publications can reach farmers searching for land. Some organizations offer assistance in recruiting your farmer. In 2012, a collaboration of groups involved in farmland access (some listed below) launched an [online farmland finder clearinghouse](#) for New England. The farmland finder is a simple, free and secure website that lists available properties. Here are a few other resources:

- Connecticut Farm Link: www.farmlink.uconn.edu
- Land For Good: www.landforgood.org
- Maine FarmLink: www.maineфарmlink.org
- New England Land Link: www.smallfarm.org/main/for_new_farmers/new_england_landlink/
- New Entry Sustainable Farming Project: <http://nesfp.nutrition.tufts.edu/farmland>
- Southeastern Massachusetts Agricultural Partnership (SEMAP): <http://semaponline.org/semap/farms-forever/>
- Vermont Agriculture Land Access Database (LAD): www.uvm.edu/newfarmer

The following can also help with the search:

- Advertisements at agricultural events, in farm supply stores, or in local newspapers.
- Word-of-mouth communication in the local community and with extension agents and agricultural service providers.
- Contact with local land trusts, agricultural commissions, and buy-local organizations.
- Discussions with local realtors.

8. RESOURCES

Here are a few resources to help you take the next steps.

- [Making My Land Available For Farming: Where Do I Start?](#)
- A Landowner’s Guide to Leasing Land for Farming [URL to come once pdf is uploaded](#)
- Land For Good resources: www.landforgood.org/land_leasing_materials.html
- Farm Transfer Network of New England: www.farmtransfernewengland.net
- Is Your Town Farm Friendly? <http://cecf1.unh.edu/sustainable/farmfrnd.cfm>

Thank you for exploring options for making your land available for agriculture. Good luck!



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Land For Good is a nonprofit organization. Our mission is to support the farmers, landowners and communities that keep New England’s agricultural lands working. We help people get onto, care for and pass on farms and other farm properties.