

## Introduction

Addressing maintenance, repairs, and improvements in a farm lease can be challenging. The lease should specify which party is responsible for what maintenance, repairs, and improvements of the premises, and any infrastructure that is subsequently placed upon the premises. Lease language should describe the process for decisions and approvals. Maintenance, repairs, and improvements should be discussed at minimum annually and as needed. In general, an annual walk around with a checklist for expected expenditures for both parties can minimize problems and ambiguity.

## The Difference Between Maintenance, Repairs & Improvements

**Learn what each term means.** Maintenance refers to the general upkeep of the premises and fixtures in a clean, serviceable and safe condition. This includes actions that prevent damage or undue wear. A repair is an expenditure that keeps property in its ordinary, efficient operating condition or restores the property to the original operating condition after it has been damaged or broken.

An Improvement substantially improves the value of a property or significantly extends its useful life. Some improvements adapt the property to a new or different

use. Others are in the category of major (or capital) repair. Some improvements are substantial fixes (e.g., a new roof) or alterations to existing features; others are additions (e.g., a new shed).

The Internal Revenue Service provides these criteria for an improvement:

- Creating an addition, physical enlargement or expansion
- Creating an increase in capacity, productivity or efficiency
- Rebuilding property after the end of its economic useful life
- Replacing a major component or structural part of the property
- Adapting property to a new or different use
- Fixing a defect or design flaw

Income tax laws should be carefully considered. The tenant may deduct expenses for repairs and semi-permanent structures (such as high tunnels) on his or her income taxes. Real property improvements add to the landowner's tax basis and should be depreciated by the landowner.

## Tenant and Landlord Responsibilities

**Be clear in the lease about who is responsible for what.** In practice and common law, the tenant is responsible for routine maintenance and minor repairs needed to avoid

deterioration of the facilities. These may include painting, replacing windows, fixing plumbing and wiring, replacing belts and other machinery parts, repairing heaters and feeders, mending fences, and clearing culverts.

The landowner is usually responsible for major repairs (see above), including new, permanent improvements. These include structural components such as construction of barns and fencing, exterior siding, roofing, water supply systems, waste treatment systems, and heating and ventilating systems, for example. That said, repairs can be handled in whatever way suits both parties.

## Capital Improvements

**Understand how to address capital improvements.** In common law, at the end of the lease all permanent structures belong to the landowner regardless of who paid for the improvements. However, a lease may provide otherwise. A lease may name the tenant as the owner and permit him to remove (at his own expense) or sell the structure back to the landowner or to a new tenant at the end of his lease. In some situations, the landowner may be willing to pay for new construction because of the value it brings to the property. The tenant may be willing to pay for an improvement if the lease term is long enough to depreciate it or recoup the investment over time.

A lease provision that allows the tenant to build equity in an improvement she paid for increases the likelihood that the tenant will invest in the land and structures. In considering reimbursement for improvements, it's important to discuss—and put in writing—any improvements that are needed, the costs of required improvements, and what will be contributed by each party. Typically, unless otherwise stated, the tenant is responsible for maintaining any new improvements, regardless of who owns them.

It's more complicated when the improvement is to the soil or other natural features of the leased premises. In the last few years more attention has been paid to “ecosystem services”—benefits to the environment from agriculture. These include carbon sequestration, biodiversity, water quality, soil quality and conservation, and pollination. But these services lack markets, so it's difficult for a landowner or tenant to assign a monetary value to them. Additionally, practices that improve soil quality also increase the productivity--and therefore the profitability--of land for future farmers.

While improving the environmental quality of the land is generally valued by both parties, there are no set formulas for how these contributions are valued or how they might be appropriately reflected in the lease. Some landowners give a credit, discount or reimbursement to their tenants for soil improvement or similar expenses. Here again, a longer-term lease helps the farmer realize a return from his stewardship practices.

## Maintenance, Repairs & Improvements in Farm Lease

While the typical division of responsibilities is described above, there are no absolute rules. Some landlords and farmers devise their own formulas for sharing these responsibilities and costs. In any case, the lease should specify who is responsible for what.

The lease should state a process for how new improvements will be approved, what improvements the landowner will allow and who owns them. For example, there should be clear guidance on whether the improvement is a permanent fixture or whether it may or must be removed by the tenant at the end of the lease. Farm tenants should only make capital improvements with consent of the landowner. The tenant should describe the





improvement, its location and construction methods. These transactions should be in writing.

If the tenant wants to build a temporary structure such as a high tunnel/hoophouse at her own expense, an approval process is still important. In these cases, it's important to specify what happens to the structure at the end of the lease. Must it be removed? If not, will the landlord buy it, and according to what formula?

Regarding maintenance, repairs and improvements, the lease should include at minimum:

- Who is responsible for maintenance and routine repairs
- A process for determining and approving what's needed
- Guidelines for scheduling and monitoring maintenance and repairs
- Treatment of capital repairs and improvements including the process for requesting and approving; who contributes to the costs; and who owns the improvement and its disposition (what happens to it at the end of the lease term).

**Land For Good** ensures the future of farming in New England by putting more farmers more securely on more land. We educate, consult, innovate and advocate with and for farm seekers, established farmers, farmland owners, and communities to navigate the complex challenges of land access, tenure and transfer. For more resources and information, visit our toolbox at [landforgood.org/toolbox](https://landforgood.org/toolbox). For help with leasing farmland, contact us at [landforgood.org/contact](https://landforgood.org/contact).



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