



Leases and Leasing: Selected Issues

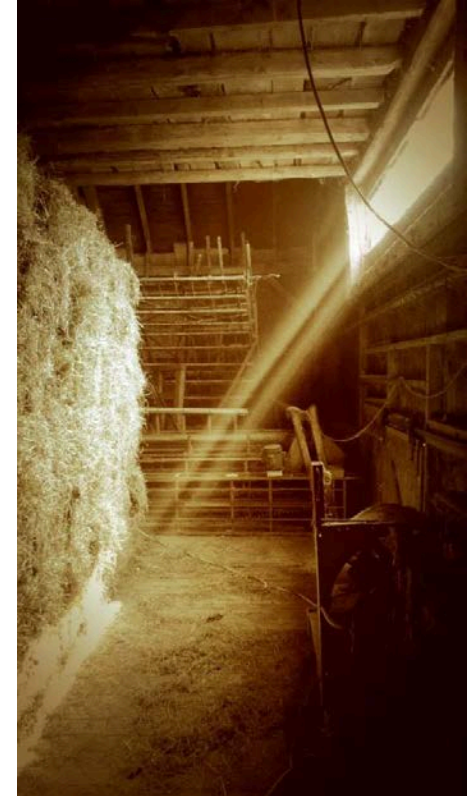
Changing Lands, Changing Hands

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Types of Leases

- Is the lease a contract???
 - Handshake: pros and cons
 - LOA/MOU/License
- **Written lease**
 - Short-term
 - Long-term
 - Ground lease
- Residence & other structures
- **Equipment, livestock**
- Leases in succession planning



The Premises

- Where are the boundaries?
- What's included?
 - Residence? Farm structures?
 - Access roads?
 - Water? Utilities?
- Landlord reserved rights?
- Baseline conditions
- Improvements to the Premises



The term

- Length of term; statutory limits?
- Lease runs with the land
- Option to renew
- Extension v. renewal
- Evergreen lease
- Rolling lease



Determining the rent

- “Consideration” is a legal requirement for a contract
- Market rates
- USDA county average rental rates (not all counties or uses)
- Landowner costs (DIRTI 5)
- Resource capacity v. actual use
- Costs of production
- Social goals

Types of rental payments

- Cash
- Share
- Flexible cash
- Graduated
- In kind:
 - Calculating
 - Tax reporting
- “No rent”... a gift, not a contract



Improvements

- **Maintenance:** general upkeep of the premises and fixtures in a clean and safe condition
- **Repair:** keeps property in its ordinary, efficient operating condition or restores the property to the original operating condition
- **Improvement (IRS definition)**
 - 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



Improvements

- Who's responsible for what?
 - Tenant may deduct repairs on taxes
 - Improvements added to Landlord's tax basis
- "Ecosystem" improvements, e.g., soil
- New structures → what happens?
 - Permanent
 - Non-permanent
- Approvals

Termination

- At the end of the lease
- Default
 - Tenant
 - Landlord
- Early termination other than default
 - Consequences for tenant
 - Obligations of landlord
- “Doctrine of emblements”

Stewardship

- Principles → goals → practices
- What's included?
- Expected vs. incentivized
- Stewardship framework
 - Management systems
 - Certification programs
 - Farm planning tools
- Monitoring



Lease as Path to Ownership



- Lease-to-own
 - Not a legal term
 - Right of first refusal
 - Option to purchase: in lease or separate
- Land contract/
installment sale
- Rent applied to purchase (= equity interest)

Tax, insurance, legal

- Taxation of rental income
 - Landlord
 - Tenant
- Current use property tax benefits
- Landlord's liability
 - Tenant's liability insurance
 - Hired or borrowed equipment
 - Property loss

Landlords

- Parents/other family
- Farming neighbors
- Public entity:
 - Municipal
 - County
 - State
 - Federal
- Non-farming private landowners (generations)
- Investors
- Land trusts & other conservation organizations
- Religious, educational institutions
- Intentional communities, CSAs etc.

Policy and Program Considerations

- Incentivize landlords
 - Education, engagement and support
 - Tax credits
 - Term length
 - Share leasing
 - Stewardship
 - Liability
 - Handshake?



Policy and Program Considerations

- Building equity
- Lease technical assistance
 - Mediation project
 - Who can “draft” a lease?
- Role of farm management companies
- Leases and farm programs
- Leases and current use programs
- Valuing natural resources; perennials



Resources

- A Landowner's Guide to Leasing Land for Farming (www.landforgood.org)
- Leasing Land to Farmers: A Handbook for New England Land Trusts, Municipalities and Institutions (www.landforgood.org)
- Build-a-Lease online tool (soon at www.landforgood.org)
- Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship (www.smallfarm.org)
- How to Determine the Right Farm Rental Rate www.uvm.edu/newfarmer/land/RentalGuide.pdf
- Sustainable Farm Lease www.sustainablefarmlease.org





Thank you!

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