

# No Such Thing as “Free Rent”

## Leasing Fact Sheet

*This fact sheet does not  
address all legal concerns  
and is not a substitute  
for legal advice.*

## Introduction

Most farmers look for ways to reduce expenses. Land rent can be a hefty expense. So finding a landlord who is happy to have farming tenants on their land for “free” seems like a win-win situation. It looks like a great deal for the farmer. Having the land in agricultural production may be of value to the landowner. Some landlords are willing to forego rental payments altogether because the property tax advantage and/or other benefits are adequate. However, from the farmer’s perspective, “free rent” may not be a good deal after all.

## Contract or Gift?

In fact, “free rent” isn’t a legal term. For a lease to be a valid contract, something of value must be exchanged. One of the oldest legal principles in contract law is that you can’t get something for nothing. A contract requires “consideration”—meaning an exchange of value. When you get something for nothing, it’s called a gift. A lease agreement without any expectation of payment by the farmer to the landlord may be seen by the courts as a gift, not a legal contract.

Legally, gifts aren’t enforceable; therefore a lease that looks like a gift can be revoked at any time. A farmer can’t use the courts to force someone to give her a gift simply because they said they would give it to her. Contracts can be enforced by one party against the other in court. If you have a contract with someone, the court may help you get what you were promised.

A court can interpret a lease as either a gift or an enforceable contract. The “lease” between the landlord and farmer is, at its legal essence, simply an agreement that the farmer has a legal right to occupy, use, and control the landlord’s property subject to lease terms. The legal rights granted by a lease can be given for free or for a price. In this way, the lease can be seen as a gift or as an enforceable contract.

Whether a lease is a contract or a gift can have tax consequences for both parties. So it’s important to establish the precise nature of the agreement.

Farmers who depend on their lease will want it to be viewed by the courts as an enforceable contract rather than a gift. What makes a contract enforceable as opposed to a gift? The exchange of something of value by both parties is a key distinction. Generally, the tenant farmer provides payment (in cash or in-kind) as his or her contribution. The landowner extends the right to use the land. The mutual exchange is called “consideration.” All contracts need consideration to be enforceable.

Cash payments aren’t the only type of consideration that a farmer might provide. Items, services, and even promises qualify. The value contributed by each party doesn’t need to be equal – it just needs to have some value, even if nominal. The bottom line is that some consideration must be specified for the lease to qualify as a contract. See [In-Kind \(No Cash\) Farm Rent Fact Sheet](#). A lease without consideration is still a lease; it’s not an enforceable contract.

Both parties to the lease must agree that consideration was or will be provided, and that the consideration is sufficient. Make sure the lease states how consideration is to be given. Most formal leases have a “boilerplate” clause at the beginning for this purpose. Note that a contract is not necessarily invalid if it doesn’t contain a specific statement about consideration, as long as the parties exchange consideration in reality. The statement is a solid piece of evidence that consideration was provided. Without it, the court would consider other evidence that consideration was, in fact, provided.

***Here are some contract language examples:***

“In exchange for good and valuable consideration, the receipt and sufficiency of which has been acknowledged, the parties agree as follows.”

“For the sum of \$1 and other good and valuable consideration, the exchange of which is acknowledged...”

“The parties have each provided valuable consideration for this contract, and each party acknowledges that the consideration provided is sufficient.”

Consideration is not something to stress over, as long as both parties agree to the nature of the agreement. If parties are providing something of value to each other and it is documented, the requirement under contract law is met. Otherwise a “no rent” agreement is a gift.

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