

### Introduction

Farmer-tenants and landlords worry. What happens if someone is injured on the leased premises? What happens if the property is damaged? Liability and property loss (“casualty”) are significant concerns, but both can be addressed in a lease.

The rules governing the landowner’s and land user’s responsibilities to each other and to third parties are complex and vary from state to state. Generally, the burden of liability responsibility falls on the person who occupies the property—in this case, the tenant. In some cases, however, landowners have been held liable if they fail to keep the premises in good repair per the lease agreement.

A casualty is damage or destruction of property resulting from a sudden, unusual, identifiable event. Examples include fire, storms, earthquakes, lightening, vandalism and flood (unless expressly excluded). Generally, the landlord bears responsibility for property loss (except for the tenant’s personal and business property which is not part of the leasehold).

### Addressing Insurance in a Lease

**Clearly spell out which party is responsible for obtaining and maintaining which insurance.** Often, the lease will require the tenant to show proof of his liability insurance—what is and is not covered, and that the policy is active. Sometimes a lease will require

that the landlord be named additional insured or will indemnify the landlord for any losses. By naming the landlord as additional insured, the farmer is essentially sharing his insurance with the landowner.

With property loss insurance, similar guidelines apply: the lease should spell out or reference which “perils” are covered and under what circumstances. Usually, the landowner carries casualty insurance, but the tenant may be required to carry fire-legal liability insurance in case of fire damage to a farm property caused by the tenant. The lease should specify what happens if property damage prevents the tenant from carrying on her business. And it should state whether the landlord is required to use the insurance proceeds to repair or rebuild if the structure is essential to the farming operation.

What’s covered? This is a key question. When shopping for policies, both parties will want the insurance agent to specify the coverage and then make sure it’s reflected in the written policy so that it’s clear to a third party such as a court. Is direct marketing at the farm stand covered? What about agri-tourism activities or food processing? What about a residence? In the case of a casualty loss, will the policy cover wind damage? Does it cover full replacement?

### Tenant’s Insurance

Liability insurance is a business necessity for most farm operations. A common level of commercial



coverage is \$1 million per occurrence and \$2 million aggregate. Depending on what is included in the policy, a farmer might need to purchase additional insurance for such things as public events or animal processing.

Tenants might want to insure their personal property such as home furnishings (if in a residence is part of the leased premises), farm and office equipment, inventory. Tenant's (also known as renter's) insurance provides protection against loss, damage or theft of personal and business items.

If the farmer is leasing equipment from the property owner, the tenant might want—or be required to—obtain coverage for “hired or borrowed equipment.” This provides coverage for damage to the equipment itself, and is not related to liability. It's relatively inexpensive, and not standard on a farm policy

going to participate in the farming operation in some way. Or the landowner could obtain a commercial liability policy which covers lessor's risks.

As with liability insurance, a standard homeowner policy will not cover loss to a property on which commercial activity is taking place. The landowner could change from a homeowner to a farm owner policy. This is usually more expensive and not recommended by most insurance carriers. They would have to require that the tenant carry fire-legal liability insurance, too. Alternatively, the landlord can require the tenant to carry property loss on her policy, naming the landowner as additional insured and “loss payee” on the farm policy.

## Landlord's Insurance

Standard homeowner's liability insurance will not cover commercial farming activities on the landowner's property. That's why requiring the tenant to hold his own insurance, naming the landowner as additional insured is a best practice. Some agents recommend that property owners maintain their own farm liability coverage in addition to being named on the tenant's policy. The landowner could add a farm endorsement to his standard homeowner's policy. She could replace her homeowner's policy with a farm liability policy, which might make sense if she were

**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).

