# Liability and Insurance in a Farm Lease

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## *A Guide for Landowners and Tenants*

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*This guide does not constitute insurance advice for individuals. Consult with your insurance professionals and legal counsel for advice concerning your particular situation.*

## RISK, LIABILITY AND INSURANCE

When leasing property for farming, both landowners and tenants often worry about liability and property damage. While they are prudent to have this concern, both the landowner and tenant farmer should take comfort to know that there are established mechanisms to minimize risk and to protect both farm property owners and farming tenants. These concerns should not be an impediment to landowners and farmers entering into lease agreements.

Insurance is a useful tool to address other concerns in addition to liability. Typically, one or more types of insurance coverage is carried by both the landowner and the tenant farmer. This guide will cover various types of insurance recommended for consideration by landowners and their tenants.

While a certain amount of risk is inherent in owning property and in farming it, both parties can—and should—take steps to mitigate risk. Parties should assess risks, identify strategies to mitigate them and develop an action plan. In the insurance industry, insured parties are obligated to take "reasonable care"—suitable precautions to avoid risk. For example, farming tenants are demonstrating reasonable care by making sure that the farm is a safe place for customers such as having a well-designed parking area and taking steps to keep wandering children from getting hurt by livestock or equipment. Landowners who have electrical wiring inspected or who fix a structural problem in a barn used by the tenant are also demonstrating reasonable care. Negligence is defined as the failure to exercise the reasonable care that a reasonably prudent person would exercise in a given circumstance.

General risk mitigation approaches include *avoidance, limitation,* and *transfer*. Avoidance means just that: don't engage in a risky endeavor. Limitation means reducing your exposure to the risk(s). Transfer means shifting the burden of the risk(s) to another. In the case of a farm lease, responsible practices and diligent maintenance will go a long way toward avoiding and limiting adverse occurrences. Transferring risk is mainly done through the use of insurance.

This guide discusses several types of insurance relevant to farm lease arrangements. The requirements for—and interests of—both landowners and farmers are discussed. Farmers may need additional types of insurance coverage not addressed here for their own business purposes, such as product liability and crop insurance.

## 1. LIABILITY

### Farmer's Liability Insurance, Covering the Landowner

A typical standard homeowner's insurance policy will NOT cover commercial farming activities on the property of a private landowner. One way for the landowner to obtain liability protection is to require the tenant farmer to carry his or her own farm liability insurance, naming the landowner as an "additional insured." The landowner should require proof of such coverage, usually via a Certificate of Insurance from the tenant's farm insurance agent specifying the location and description of the insured property. If there are multiple properties involved, each of these should be named in the policy. This should be a requirement in any farm lease. The landowner must still keep his or her own homeowner's insurance coverage, or carry a farm liability policy as described in the next section below.

**Both parties can take steps to mitigate risk.**

By naming the landowner on the tenant farmer's liability insurance policy, the farmer is essentially sharing his or her 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 a non-payment of premiums or if the insurance is terminated and no longer in force.

Both the landowner and the tenant should consult their respective insurance agents to determine the appropriate levels of liability insurance. At the time of this publication, a common level required is a minimum of $1,000,000 per occurrence and $2,000,000 aggregate coverage.

It is acceptable for the property owners to ask for a copy of the actual farm liability policy. Both landowners and farmer tenants should make sure that they understand what is covered and not covered. The definition of farming for insurance purposes is generally limited to the raising of crops and farm animals. When relevant, it is important to make sure that the farmer's insurance policy also covers other activities on the farm that are not directly covered under the definition of farming. These might include production of value-added products, food processing, agri-tourism and direct marketing ventures such as a farm stand. If such activities will take place on the leased property, and are not covered by farm liability policy, then the farmer should be required to obtain additional coverage for them. In some cases, the farmer can purchase additional farm business coverage as a part of their farm liability policy to address this issue. In other cases, the farmer may need to purchase a separate commercial liability policy that covers these specific activities. With a commercial liability policy, the tenant farmer should also name the property owner as an additional insured.

**Landowner's Liability Insurance**

In many cases, the landowner is considered adequately insured for liability by being named as additional insured on the farmer's liability policy, provided that the landowner also maintains his or her standard homeowner policy. However, some insurance agents feel that in certain circumstances it is important that property owners also maintain their own separate farm liability coverage in addition to being named on the farmer's liability policy. Both parties maintaining this coverage provides for broader coverage, and increases the dollar amount of the coverage available in the event of a claim since the parties are not sharing one limit for coverage. There are generally three ways landowners can obtain this coverage:

**Understand what's covered in a liability policy.**

1. In some cases, it may be possible to add an "incidental farm and animal liability endorsement" to the landowner's standard homeowner policy by request, and at a (usually small) additional cost. This is usually the least-cost option. However, these endorsements are not often available, and still may not address all of the landowner's liability protection needs. If this option is available, the landowner should discuss this endorsement with the insurance agent to clearly understand what this rider will and will not cover.

2. Property owners may replace their homeowner's insurance policy with their own farm liability policy. This option would particularly make sense if the landowner is either partnering with the tenant-farmer in some way, or decides to engage in his or her own farming enterprise.

3. The landowner keeps his or her homeowner policy but then adds a commercial liability policy which covers "lessor's risk." This is also known as landlord liability insurance.

Property owners should consult with their insurance agent, and possibly their attorney, to determine if they should have coverage in addition to being named additional insured by the farmer tenant and, if so, which approach makes the most sense for his or her circumstances. If the property owner does incur an increase in his or her insurance as a result of engaging in a farm lease, he or she might consider factoring this additional cost into the lease fee paid by the farmer. There are also special considerations if a residence is included as a part of the farm rental. This is discussed in Section 7 below.

## 2. AUTOMOBILE LIABILITY

It is also often recommended that the farmer's policy includes an endorsement for "hired and non-owned vehicles". This endorsement would cover liability for actions related to rented or borrowed automobiles or the automobiles of employees or venders. This would also cover the farmer's personal vehicles which are not owned by the farm business, for instance a pick-up truck registered to the individual rather than to the business. This coverage is relatively inexpensive, but not standard in a farm policy, and needs to be requested.

If the tenant has commercial vehicles owned by the farm business, the tenant farmer should also carry commercial automobile liability coverage in their farm liability policy. This coverage will provide liability protection in the case that there is an accident related to the farmer's commercial vehicle(s) while in use on the farm property, and usually also elsewhere.

**Coverage for borrowed equipment might make sense.**

## 3. BORROWED OR HIRED EQUIPMENT BELONGING TO THE PROPERTY OWNER

If the farmer-tenant will be borrowing or leasing equipment from the property owner, the farmer should carry coverage for "hired or borrowed equipment" in his or her farm policy, and the property owner should consider requiring this in the lease. This provides coverage for damage to the equipment itself and is not related to liability. The level of coverage will be based on the value and amount of equipment to be covered. This type of coverage is relatively inexpensive, but not standard on a farm policy. It must be requested. In cases where the use of equipment will be more than incidental and over extended periods of time, it sometimes is recommended that the tenant include the specific leased equipment directly on his or her farm insurance policy for property loss and casualty instead of, or in addition to, having the "hired or borrowed equipment" endorsement.

## 4. POLLUTION AND ENVIRONMENTAL LIABILITY

Basic coverage for pollution and environmental liability is generally included in standard farm liability policies. However, it is usually limited in scope, and the policy is likely to include specific exclusions. While additional pollution and environmental liability is available, it can be extremely expensive.

Generally, most farmers do not carry this additional coverage, and it usually is not necessary. However, both the landowner and tenant should discuss this issue with their respective farm insurance agents within the context of the type of farming by the tenant and the coverage available under that farmer's general farm liability policy. It is quite possible that the coverage in the general farm liability policy will be sufficient, and no additional insurance will be required.

## 5. PROPERTY LOSS AND DAMAGE

As with liability insurance, a standard homeowner policy will not cover for property loss from fire or other damages to buildings on the farm property while commercial farming activity takes place on it. There are two options to remedy this:

In the first option, the property owner changes from a standard homeowner policy to a farm owner policy AND requires the tenant farmer to carry fire-legal liability insurance in case of fire or other damages to farm property. The tenant must also name the property owner as an additional insured on that policy, which will cover damages only if the farmer is found to be negligent and, therefore, legally responsible for a fire or other damages to the property. In the event of property loss due to other sources not related to the farmer's negligence, such as electrical wires, lightening, snow load or flooding, it will be the property owner's farm owner policy that will cover these losses.

The fire-legal liability insurance in case of damage to farm property is relatively inexpensive. Farm owner policies premiums vary. In some cases, they are actually less cost than some homeowner policies. However, in other cases, farm owner policies may be as much as 30 percent higher than a standard homeowner policy. If the property owner incurs an increase in his or her insurance as a result of engaging in a farm lease, he or she might consider factoring this additional cost into the lease fee paid by the farmer. Most general insurance carriers stay away from farm owner insurance policies. However, there are a number of insurance companies in the region that specialize in farming and agriculture. A list of those companies can be found at the end of this document.

**A standard homeowner policy may not cover property loss on a farm property.**

The second option requires the farmer to include property loss insurance on his or her farm policy and to name the property owner as an additional insured and "loss payee" on the farm policy. In this case, the property owner would need to continue to carry his or her standard homeowner policy, but the farmer would NOT need to carry the additional fire-legal liability insurance in case of fire damage to farm property because the farmer would be providing insurance through their farm policy.

The latter of these options is the least expensive approach. However, there are reasons why a property owner would choose the first approach, such as if he or she also decides to become involved in commercial farming activities. Ultimately these options should be discussed with an insurance professional within the context of the particular lease to decide which option will be best for that situation.

In either scenario, it is important that both the property owner and the tenant farmer understand what hazards, or "peril groups" beyond fire damage are covered, and under what circumstance coverage would apply. For instance, not all policies will cover wind damage under all circumstance, and most do not cover flooding. Whether property loss is covered by the insurance of the tenant or of the property owner, the property owner should make sure that they are aware of what "peril groups" are covered and that the insurance adequately protects their property.

**When Property Loss Affects the Ability of the Farm Business to Function**

The farm lease should specify what happens if property damage prevents or significantly limits the tenant from carrying on his or her business. And specifically, the lease should state whether the landowner is required to use the insurance proceeds to repair or rebuild buildings and infrastructure that is essential to the farming operation and in what time frame. Otherwise, it can't be assumed that the landowner will rebuild, and the tenant may need to be released from the lease if they are no longer able to continue to carry out their business on the property.

**Levels of Property Loss Insurance**

If the farmer will carry the property loss insurance on the leased farm, there should be an agreement between the property owner and the farmer regarding the level of coverage to be carried, specifically on the farm buildings to ensure that it is adequate. For instance, the replacement cost of an antique barn may be substantially different from the cost of rebuilding a barn that would serve the same utility purpose. It will be important to consult with insurance professionals to determine the most appropriate level of coverage. For a discussion of coverage levels, see "How Much Property Insurance Should I Buy?" from "Insuring Your Farm…The Basics of Property & Liability Coverage" from the Maine Bureau of Insurance (https://www.maine.gov/pfr/insurance/consumer/consumer_guides/pdf/insuring_your_farm.pdf).

## 6. WORKERS' COMPENSATION

If the farmer has employees, including interns, he or she is required by state law to carry a certain level of workers' compensation insurance. These laws also specify the difference between an employee and a contractor. If there is an accident on the farm involving a farm employee and he or she takes legal action for compensation against the farmer, the farm liability policy will not cover the farmer if he or she has not provided for workers' compensation insurance to the level required by state law. Therefore, many farm leases will include a requirement that the farmer carry workers' compensation "at least to the minimum limits imposed" by the state where the farm is located to reduce the risk of an injured employee seeking compensation from the landowner when it is unavailable from the farmer.

## 7. LEASING A RESIDENCE

**When the farm lease includes a residence used by the farmer**, the following applies:

- When the farmer is naming the property owner on the farm general liability policy as described above, the property owner still needs to carry a standard homeowner policy, but generally does not need to carry additional lessor liability insurance. However, the property owner generally needs to carry additional property loss insurance on the residence, since the standard homeowner policy will not cover commercial use of the building (i.e. rental).
- If the property owner has a farm owner policy instead of a homeowner policy, the property owner will typically need additional lessor liability insurance and property loss insurance for the residence, even when the farmer has named the property owner on his or her farm policy.
- The farm property loss insurance of the tenant may only cover their business property and not personal property in the residence. The tenant may desire to purchase additional "renter's insurance" to cover their personal property.

**There are advantages to the landlord and tenant having the same insurance company.**

**When the Property Owner and Farmer have the same Insurance Company**

There is a substantial advantage to both the property owner and the farmer having the same insurance company, since in the event of a claim, there will be no dispute over which insurance company is responsible for paying the claim. Further, if the same agent is involved with determining the insurance for both parties, the agent will be responsible for making sure that all insurance issues are covered and addressed by either one party or the other. In theory, this makes it less likely that some coverage issues will be missed.

## NEW ENGLAND FARM INSURANCE COMPANIES

The following insurance carriers specialize in agriculture and farm insurance in our region. Each company has a website with a "find an agent" tab to direct you to an insurance agent in your area. In no particular order, these 6 insurance carriers are:

- Farm Family Insurance (New England wide)
  https://www.farmfamily.com/
- Co-Operative Insurance (Vermont and New Hampshire only)
  https://www.co-opinsurance.com/
- Maine Mutual Group-MMG (New England wide)
  https://www.mmgins.com/
- Nationwide Agribusiness (New England wide)
  https://www.nationwide.com/business/agribusiness/
- Acadia (New England wide)
  https://www.acadiainsurance.com/
- Countryway Insurance (New England wide except Rhode Island)
  https://www.countryway.com/