

The Landowner's Guide to Sustainable Farm Leasing

BY EDWARD COX

Disclaimer

The information in this Guide is intended for use as educational material to assist landowners, farmers, and their advisors in understanding various laws, regulations, and lease provisions. The Guide is not intended, and should not be used, as a substitute or replacement for individual legal advice. Landowners and farm operators should consult a lawyer and other relevant professionals prior to entering a lease agreement. Reasonable efforts have been made to ensure the accuracy of the information contained in this Guide; however, the content and interpretation of laws and regulations are subject to change. The effect of future legislative, administrative, and judicial developments cannot be predicted. For these reasons, the utilization of these materials by any person represents an agreement to hold harmless the author, the Agricultural Law Center, Drake University and the Law School, the Leopold Center, and Iowa State University for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this Guide.

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More landowner resources and tools regarding sustainability on leased farmland are available at www.sustainablefarmlease.org.

Support



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The Drake Agricultural Law Center is internationally recognized for providing opportunities to study how the legal system shapes our food system and influences the ability of the agricultural sector to produce, market and utilize agricultural products. It's located on the web at www.law.drake.edu/agLaw

Cover Image

An American flag created on the landscape of a farm during the Dust Bowl days. Photo courtesy of USDA Natural Resources Conservation Service.

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Introduction

What You Will and Won't Find Here and Where to Look for What You Won't

An Explanation of the Guide

Duties and responsibilities regarding the stewardship of agricultural land can be a complex issue for any landowner. The issue, however, becomes more complex in the context of a farm lease arrangement. While landowners and tenants may sometimes have different views, values, or goals in relation to the property, cooperation is critical to the promotion of a sustainable farm operation. To promote sustainability through a joint effort, landowners must first understand their role in the landlord-tenant relationship and their duty to the land; both subjects that may be confusing to new landowners or those separated from the land geographically or culturally. A landowner may grant tenant operators the right to use the land, but the landowner retains the greatest long-term interest in the land and is ultimately responsible for the sustainability of the farm operation.

The purpose of this guide is to introduce you to important issues regarding the sustainability of your leased farmland and provide some insight on how to encourage your tenant to take an active role in the sustainability of the operation. It is important to point out that a sustainable lease does not necessarily ensure a farm operation will address all the aspects of a sustainable system. Rather it provides a step in the direction of sustainability. Of course, the size of that step depends on a number of circumstances, including the needs and values of you and your tenant.

This guide briefly presents the economic, social, and ecologic benefits of sustainable agriculture, though it is not the intent of the guide to persuade landowners of a particular set of values or to promote a specific manner of farming. As will be discussed in Chapter One, there are a variety of ways to farm sustainably, and a truly sustainable lease must fulfill the concerns and needs of landowner and tenant.

This guide may be viewed online or printed. The online version, available at www.sustainablefarmlease.org, provides links to additional information found on the site, such as analysis of relevant landlord-tenant laws and links to external resources including government, academic, and non-profit websites and publications. It also provides additional information through video interviews with landowners, farmers, farm management experts, and others.

Chapter One: The Basics

This section provides a brief introduction to sustainable agriculture and the basics of a farm lease. This includes a brief discussion of the different issues encompassed by sustainable agriculture, the ecological and economic benefits of sustainable farm practices, and the particular relevance of stewardship issues regarding leased farmland. This chapter also discusses the importance of a written lease, provides a list of important provisions to include in any farm lease agreement, and gives a brief overview of the most common types of farm lease arrangements.

Chapter Two: Determining Priorities

Chapter Two explains the importance of determining priorities for both yourself and the land. It also provides a list of important questions to ask yourself before talking with your tenant and negotiating the terms of a lease.

Chapter Three: Talking to Your Tenant

This chapter provides information you might consider when talking to your tenant. The chapter focuses on understanding the tenant's perspective, provides resources for basic farm and leasing terminology, and concludes by emphasizing your role, as the landowner, in ensuring the sustainability of the property.

Chapter Four: Farm Leases, Sustainability, and the Law

Chapter Four discusses the interaction of farm leases with the law and how this interaction can impact the sustainability of the lease arrangement and farm operation.

Chapter Five: Key Considerations for a Sustainable Farm Lease

This provides the heart of the guide. This chapter examines the key considerations for developing a sustainable farm lease arrangement. The issues addressed are the term of the lease, reimbursement for unused improvements, cost-sharing and risk-sharing arrangements, conservation provisions, and landlord-tenant communication.

Chapter Six: A Few Additional Considerations

This chapter discusses a few specific matters related to sustainable agriculture on leased farmland. The topics include recreational uses, ecosystem services contracts, agricultural and conservation easements, and assisting new farmers.

Obtaining Additional Assistance

As noted in the disclaimer, this information is not intended as legal advice and is not a substitute for consultation with competent professionals. This disclaimer highlights the importance of seeking assistance to ensure a fair, legal, and sustainable lease agreement. There are a variety of professionals ready to assist landowners. The list below discusses some of the most common sources of information on leasing farmland and ensuring its sustainability. The last section specifically addresses assistance for women landowners.

Attorneys

The value of sound legal advice is critical to ensure the priorities of the landowner and the sustainability of the farm are protected. While legal advice is often sought in order to enforce

the rights of a party after a dispute has arisen, it can be beneficial in terms of finances, good will, and even the well-being of the land to seek counsel prior to entering an agreement.

A farm lease is a legally binding contract that creates important rights and obligations for both parties. However, landowners often enter oral lease agreements or simply fill in the blanks of form leases without an adequate understanding of the terms and conditions. Attorneys can assist in explaining the rights and duties that arise from such contracts and negotiating the terms of the lease agreement to ensure the landowner's priorities and the sustainability of the farm are protected.

The legal ramifications of a farm lease can also extend beyond the duties and responsibilities of the lease contract itself. There are issues involving taxes, social security, estate planning, and the availability and distribution of benefits from government farm programs to name a few. An attorney can assist in explaining and planning for these additional consequences.

USDA Staff

The Department of Agriculture has numerous programs designed to provide assistance to both farm operators and landowners. Many of the programs are designed specifically to improve conservation on the farm and prevent environmental degradation stemming from agricultural activities. These programs include financial incentives, cost sharing, and providing expertise to farmers and landowners. There are also programs addressing farm tenure issues, particularly relating to increasing access to beginning or disadvantaged farmers.

Specific programs are addressed in more detail in relevant sections of this guide. For example, more information on the USDA's Transition Incentives Program (TIP), which provides financial incentives to landowners who enter long-term leases with beginning or disadvantaged farmers, is found in the section on "Assisting a New Farmer" in the final chapter.

The staff in the USDA's Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) can explain the available programs and help develop conservation plans for the farm operation.

University Extensions

America's Land Grant Colleges and Universities have Extension Offices focused on researching and providing information to the agricultural sector. There are over 2900 extension offices nationwide that provide practical information and education on a variety of agricultural topics, including farm management skills, farmland leases, improving productivity, and protecting natural resources.

Farm Management Services

Many landowners choose to use the services of a private farm management business. Farm managers provide a variety of services including negotiating and implementing lease agreements, establishing soil conservation and nutrient management plans, coordinating the use of government programs, and maintaining financial and other farm records. These services

Additional Resources:

USDA Service Center Locator

- ▶ Find your county USDA office.
- ▶ Visit <http://offices.sc.egov.usda.gov/locator/app>.

Extension Index

- ▶ Locate your local office
- ▶ Available at www.csrees.usda.gov/Extension/USA-text.html.

Iowa State University's Ag Decision Maker

- ▶ Online resources for farm management, including leases
- ▶ Located at www.extension.iastate.edu/agdm/?src=text.

are provided for a fee, often a percentage of the rent. Landowners should speak extensively with potential farm managers to ensure any lease arrangements reflect their priorities.

Other Professionals

Other professionals that can provide assistance include CPAs and insurance agents. These professionals can offer advice and services regarding specific aspects of your farm lease.

Non-Profit Organizations

There are numerous non-profit organizations providing information and assistance in a variety of areas. These organizations provide services ranging from information on sustainable farm practices to networking for landowners and beginning farmers.

Other Landowners

The knowledge and experience of other landowners can provide a useful resource. Other landowners can share their expertise regarding the farm sector in general, sustainable practices, relationships with tenants, and more. They can also provide a useful network to find competent tenants who share your values and priorities. Practical Farmers of Iowa, highlighted in the panel to the left, is an organization of farmers dedicated to researching and sharing information on profitable, ecologically sound, and community-enhancing approaches to agriculture.

Additional Resources:

Practical Farmers of Iowa

- ▶ Focusing on farmer networking and information sharing to promote sustainable farm operations.
- ▶ Located on the web at www.practicalfarmers.org.

Non-profits with a focus on assisting women landowners and farmers

- ▶ Women, Food & Agriculture Network at www.wfan.org/Women,_Food_and_Agriculture_Network_Home.html
- ▶ Women, Land & Legacy at www.womenlandandlegacy.org

Tenants

Landowners often depend on their tenants for information on matters including typical rental rates, customary farm practices, and appropriate conservation measures. This dependence can be due to a landowner's close relationship with a tenant, lack of knowledge or experience in agriculture, or perhaps even a sense of alienation from the farm operation.

In many landlord-tenant relationships reliance on a tenant for information regarding lease arrangements might produce a fair agreement for both parties and may even include consideration for the sustainability of the land. However, it is important for a landowner to recognize the different and often opposing motivations and objectives of the two parties.

Assistance for Women Landowners

Seeking assistance outside of the tenancy relationship or even the local agricultural community can be particularly important for women landowners. Many

women landowners have expressed a sense of alienation from the agricultural community. This limits their access to vital information and networking with other landowners and farm operators. Such limitations can result in less than fair lease arrangements and a lack of input on how the farm is operated. There are organizations specifically focused on providing information and networking to women landowners and representing their interests in the larger agricultural community.



Chapter One: The Basics

An Introduction to Sustainability & Farm Leases

The Basics of Sustainability

American agriculture faces a growing number of challenges stemming from environmental degradation, increased competition for farmland, and a declining rural economy. A few of the environmental concerns related to conventional agriculture include the depletion of natural resources such as soil and water; degradation of water quality in our rivers, lakes, and oceans; contamination of drinking water; air quality issues; loss of wildlife habitat and biodiversity; and contribution to global warming. The list goes on, though the environment is not the only challenge facing our agricultural system.

Gaining access to land for beginning and even mid-sized farm operations is becoming increasingly difficult as farmers compete for land with larger operators, wealthy investors, and the consumption of fertile farmland for development. The farmers that do have access to land face a loss of independence and little to no control in the price they receive for their products as large agri-business interests gain more control of the production process. This creates a system of farmers reliant on credit and the whims of large corporations, contributing to a decline in the number of farms, further concentration of farmland in the hands of a few entities, and the disintegration of rural communities.

However, it is important to recognize that along with challenges come opportunities. Sustainable land management can aid in reducing the problems arising from certain conventional agricultural practices, while also mitigating harmful activities outside the realm of agriculture. In essence, agriculture has the potential to provide solutions to environmental degradation, contribute to the nation's energy supply, create employment and entrepreneurial opportunities, and assist in revitalizing stagnant rural economies.

This is not to say that every landowner should enter a specific type of lease arrangement or rent only to certain types of farmers. Nor does it mean that every farm operation should use the same practices. However, understanding the concepts and benefits of sustainable agriculture can guide the decision-making process to ensure the farm operation on your property benefits the natural resources of the farm itself, the environment as a whole, and the rural community while continuing to meet the needs of you and your tenant.

What is Sustainability?

Sustainable agriculture has been defined by a number of individuals and institutions. A few definitions and elaborations on the concept of sustainable agriculture can be found in the U.S. Farm Bill, the National Agricultural Library, the Leopold Center for Sustainable Agriculture, and many other sources. Access to these resources, as well as an essay, "On Defining Sustainable Agriculture," is provided in the additional resources box.

In essence, sustainability means the utilization of a resource in a manner that allows its continued use indefinitely. In terms of agriculture this necessarily relates to a number of topics. The definitions in the above resources highlight the central concepts necessary for a continuously productive agricultural system. The consistent elements in the definitions include:

- Productivity
- Long term profitability
- Environmental stewardship
- Quality of life for farmers, laborers, and the community

These elements are included in the definition of sustainable agriculture because they are all practical necessities in achieving an agricultural system that can meet the nation's food and fiber needs on a continuous basis. Agriculture, by definition, must be productive, and this productivity relies on the availability of natural resources and the profits and quality of life to keep farmers on the land and communities socially and economically stable.

As previously mentioned there is no one particular way in which to farm sustainably. Sustainable agriculture can include an array of practices, including crop rotations, planting cover crops, establishing buffer strips, integrating livestock and crop-production, developing on-farm energy sources, marketing fresh produce or value added farm items locally, or assisting a beginning farmer.

While sustainability can be achieved through a variety of practices, it is important to also remember that sustainability depends on an approach which addresses preservation of natural resources, while continuing to be productive, profitable, and beneficial for the community and society. The versatility and holistic nature of sustainability deserves special attention when developing an agricultural lease. The property and the landowner may benefit more from adopting a lease that encourages sustainable practices or sets threshold requirements rather than mandating specific practices.

Additional Resources:

Definitions of Sustainability

- ▶ USDA, Alternative Farming Systems Information Center, Sustainable Agriculture: Definitions and Terms at www.nal.usda.gov/afsic/pubs/terms/srb9902.shtml#toc2.
- ▶ Leopold Center for Sustainable Agriculture, What is Sustainable Ag, found at www.leopold.iastate.edu/about/sustainableag.htm.
- ▶ John Ikerd's essay, "On Defining Sustainable Agriculture," available at www.sustainable-ag.ncsu.edu/onsustaibableag.htm.

Information on sustainable farm practices:

- ▶ Leopold Center for Sustainable Agriculture: Ecology Resources by Subject at www.leopold.iastate.edu/research/eco_files/resources.html.
- ▶ National Sustainable Agriculture Information Service: Master Publications List at www.attra.ncat.org/publication.html
- ▶ USDA, Natural Resources Conservation Service (NRCS), Conservation Choices: Your Guide to 30 Conservation Practices, available at <http://www.ia.nrcs.usda.gov/news/brochures/choices.html>.

This can allow for greater flexibility and creativity on the part of the farm operator to promote the sustainability of the farm in a manner that minimizes their costs and risks. The aspects playing critical roles in the adoption of sustainable practices are discussed further in the section, “Key Considerations for a Sustainable Farm Lease Agreement.”

It is important to mention that farmers and landowners should not be discouraged or intimidated by the scope of the challenges. While it is an important issue, sustainability cannot be achieved overnight, and it is better to implement change incrementally while addressing financial and other needs of landowners and tenants than to estimate the challenge as insurmountable and continue to ignore the problem.

The Value of Sustainable Practices on Farmland

As has been discussed, sustainable agriculture, inherently benefits society as a whole and future generations by ensuring a stable food supply while protecting on-farm and off-farm resources. While the protection of the land’s resources and helping to ensure the stability of the country’s social and economic fabric is reward in itself, there is nothing wrong with asking what the financial benefits are for farmers and landowners who adopt sustainable management. After all, the livelihood of those managing the land is of vital importance to ensuring the continuance of agricultural production, and the principle of expecting a return on investments in land is a well-engrained principle in American property ownership.

The lists below highlight some of the reasons for considering sustainable practices on agricultural land. Sustainable agriculture produces both environmental and economic benefits. It is important to understand these benefits not only for the purpose of recognizing the value of sustainable farming practices, but also in order to understand their effects on the landlord-tenant relationship. The adoption of sustainable practices can create variations in the economics of the farm operation, effecting the costs and benefits of both parties. It is crucial to the development of a stable, equitable, and profitable lease to recognize and address these variations.

Ecologic Benefits

- 1 Soil Conservation: Soil is the principle resource for the farm operation, and it is essential to the sustainability of your land. Sustainable practices and improvements that prevent runoff and erosion maintain the long term productivity of the land.
- 2 Water Quality: Improving water quality protects drinking water and recreational resources which add value to the local economy through recreational activities and an overall improved quality of life. Decreased sediment and nutrient runoff increases biodiversity in rivers and streams and reduces the effects of hypoxic “dead zones” in environmentally and economically sensitive areas, such as the Gulf of Mexico and Chesapeake Bay.
- 3 Flood Damage Mitigation: Certain conservation practices, including conservation tillage, cover crops, buffer strips, and wetlands restoration reduce the amount of runoff from rainfall. This not only reduces erosion on the farm but also decreases water velocity and damage downstream.
- 4 Air Quality: Minimizing the release of particulates and noxious odors improves the health and quality of life in the surrounding community and encourages a more vibrant social and economic setting.
- 5 Wildlife Habitat: Improves biodiversity and recreational opportunities both on the farm and off.

- 6 Mitigates Global Warming: Sustainable farming can reduce the release of greenhouse gases on the farm while absorbing additional CO₂ from the atmosphere, resulting in a net reduction to global warming. This provides external benefits but also contributes to reducing the impacts of global warming on the farm.

Economic Benefits

- 1 Long Term Production: As mentioned above soil conservation is essential to the sustainability of the land. Because of soil conservation's direct impact on long-term productivity it also deserves being mentioned here.
- 2 Reduced Inputs: Conventional farming relies heavily on the use of off-farm inputs. These inputs can include energy for running facilities; fuel for equipment; fertilizer in the form of nitrogen, phosphorous, or manure; and pesticides and herbicides. Sustainable agricultural practices can eliminate or reduce the need for many of these inputs or supply them from on-farm resources. This can result in additional stability for long term planning and financial savings for both the farm operator and landowner. It should be noted that sustainable practices that decrease off-farm inputs may require additional labor, skill, and equipment. This potentially creates a variation in the typical contributions of landlord and tenant, which should be discussed openly between the parties and addressed in the lease agreement. Sharing costs is discussed further in the chapter, "Key Considerations for a Sustainable Farm Lease."
- 3 Reduced Transaction Costs: A reduction in inputs also reduces the expenses of complying with the rules and permits required for their application. There may, however, be additional transaction costs if the landowner or operator decides to become certified as an organic producer. Again, you may want to consider the contributions of the parties in order to share any costs that are increased.
- 4 Marketing Opportunities: As consumers become more conscious of the nutritional value and other factors regarding the food they purchase, demand for sustainably raised food increases. This can be seen in the recent growth of the organic food market and the rapid increase in farmer's markets. This can create additional sources of income, but there are leasing issues that might arise from taking advantage of these markets. For instance, direct marketing on the farm, such as a produce stand, will create a number of legal concerns such as zoning, liability and insurance, licensing, and compliance with health regulations. These are matters that will need to be addressed in the lease agreement.
- 5 Recreation Opportunities: Demand for recreation on private land has seen a dramatic increase. Providing access to the land for recreational enthusiasts can provide increased income through access fees or leasing as well as government programs. The rights of the parties to use the property for recreational purposes, either personal or for profit, needs to be addressed within the lease agreement. This is discussed more in the final chapter, "A Few Additional Considerations."
- 6 Government Incentives: There are a number of conservation programs, and a few programs addressing farmland tenure, administered through the USDA and individual states. Many of these include incentives by way of cost sharing, tax credits, technical assistance, and rental payments. It is important to understand the law governing participation in farm programs and to use the lease to address the roles of each party in program enrollment and their entitlement to program payments. More detail is provided on this topic in "Farm Leases, Sustainability, and the Law."

- 7 Ecosystem Services: This concept is used to create a market for providing environmental benefits. Participation is currently voluntary, but opportunities are available for payments for practices resulting in improved water quality and increased wildlife habitat and biodiversity. Many of the programs require long term commitments, making it necessary for the tenant to have a long enough lease term to match the ecosystem services contract or to have the participation of the landowner. Both parties can benefit from providing environmental services, but it is essential the parties discuss the issue and address such options in the lease. Further details are examined in Chapter Six.

Example: Buffer Strips

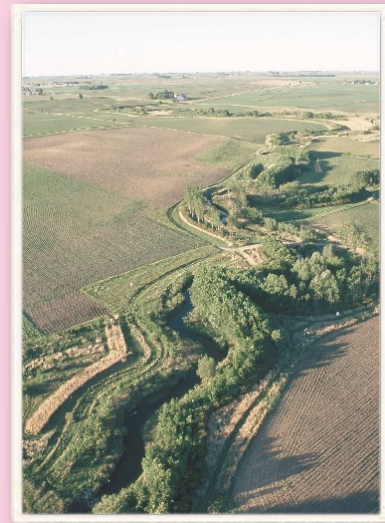
"Conservation buffers are small areas or strips of land in permanent vegetation, designed to intercept pollutants and manage other environmental concerns." - USDA, NRCS

Ecologic Benefits

- ▶ Reduced Soil Erosion
- ▶ Runoff Retention
- ▶ Improved Water Quality
- ▶ Increased Wildlife Habitat

Economic Benefits

- ▶ Long-term production benefits from soil retention
- ▶ Recreational leasing opportunities due to increased wildlife
- ▶ Cost-sharing of improvement costs through federal and state programs such as CRP or EQIP.
- ▶ Possible ecosystem service payments for water quality and wildlife habitat improvements.
- ▶ Tax credits for conservation improvements



Farm Lease Basics

Creating a strong foundation is an important step in constructing a sustainable lease arrangement. Developing such a foundation requires understanding some basic farmland leasing concepts. The information provided below is meant to serve as an introduction to routine issues regarding agricultural leases, the essential terms of a farm lease agreement, and the various types of agricultural leases. More in-depth information on the topics covered here and their relation to encouraging sustainable practices is provided in the chapters that follow.

Putting it in Writing

Oral lease agreements are not as common as they once were but still comprise about one-third of the farm leases in Iowa. While representing a minority of the farm leases, this number is significant in light of the serious nature of such leases. Farm leases create rights and obligations regarding substantial economic and often societal interests. The continued use of oral leases is likely due to a number of factors. These factors include a tradition of using oral leases in

farming arrangements, a close relationship between the landlord and tenant, and anxiety about insulting the other party. However, there are several reasons, both legal and practical, to put the lease agreement in writing.

The Statute of Frauds

A lease agreement, as with any other contract, must meet certain requirements to be legally enforceable. All of the states have enacted a statute of frauds requiring contracts involving real estate to be written. This would preclude the enforcement of oral leases. However, the states have also adopted exceptions to this rule. The statutory exception in Iowa is indicative of the law of most states, which allows leases of real estate for a year or less to be made by oral agreement. However, there are variations. Indiana law, for instance, allows oral leases for land for a term of up to three years. It is important to note that oral leases made for a period greater than that allowed by law may still be enforceable as a year to year tenancy or a tenancy at will depending on state law.

Recording

In addition, a written lease can be recorded, and is sometimes required to be recorded, in order to protect the tenant against subsequent claims to the property. For example, if the landlord sells the property during the lease term a recorded lease helps ensure the new owner adheres to the lease agreement.

Documentation for Third Parties

A written lease may also be beneficial in order to supply documentation to third parties. For instance, a lease document can be used for assessing tax liabilities or entering government farm programs.

Practical Considerations

Using a written lease also has practical benefits. A written lease provides an easily accessible reference tool. Lease arrangements may continue for several years without renegotiation of the terms, and the parties may simply forget what the terms were. A written lease is an easy way for the parties to refresh their memories.

It also acts as a reference should the interest of either party be transferred to a new landlord or tenant who was not present when the agreement was originally entered. Having this reference helps ensure the provisions of the lease are honored and allows a new landlord or tenant to check the terms of the agreement without confronting the other party.

Putting the agreement in writing also helps ensure both parties understand the terms at the beginning of the lease. A written document allows the parties to examine each provision together and address misunderstandings or concerns over particular terms.

The importance of providing a clause requiring further agreements or modifications regarding the lease arrangement be made in writing is also worth noting. These are commonly found in typical form leases.

Important Components of a Farm Lease

The list below provides an overview of important provisions to include in a farm lease and their possible effects on sustainability. More in-depth information on the elements that have a large impact on the adoption of sustainable practices is provided in the section, "Key Considerations for a Sustainable Farm Lease."

1. Identity and Signatures of the Parties

The names and contact information of both parties should be provided with designations for landlord and tenant or lessor and lessee. Tax identification numbers might also be included for purposes of farm program payments. Both parties should also sign the agreement to ensure its enforceability. This includes all co-owners of the property.

2. Description of the Property

The description should be sufficient to allow a stranger to interpret the meaning and identify the location of the property. This can be done informally through the use of road names, addresses, or similar characteristics, although a formal legal description in metes and bounds or using the government survey system is preferable. A legal description is particularly important where only part of your property is leased or if the lease agreement contains an option to purchase or a right of first refusal. Regardless of the method used, clarity is crucial and the number of acres should also be included. If there are any buildings or improvements that are excluded from the lease, these should be noted.

3. Lease Term

The lease term describes the period of time for which the lease will last, or the lease's duration. A lease should specify the beginning and ending date of the lease and can also include the number of years it will last. The term of the lease can have a significant impact on the adoption of sustainable practices. A term of several years provides the tenant more incentive to care for and improve the farm's resources. It also, of course, binds the parties to the conditions of the lease for a longer period of time, a matter of great concern for landowners. A detailed discussion of the importance of the term to a sustainable farm operation and considerations for addressing landowner concerns about long-term commitments is included in "Key Considerations for a Sustainable Farm Lease."

4. Termination and Renewals

The manner and time in which notice of termination must be given and the method for renewing the lease are also important provisions. The lease should specify if and when notice must be given as well as the consequences of not providing proper notice, such as a renewal of the lease for another year.

It is important to ensure notice of termination procedures are in compliance with state law. Iowa has specific, mandatory termination procedures with few exceptions. The statutes and cases establishing these procedures and exceptions are discussed in "Chapter Four: Farm Leases, Sustainability, and the Law."

5. Method and Amount of Rent

Agricultural leases are usually categorized by the type of payment used. The most common categories include cash rent, flexible cash rent, and crop or livestock-share leases. These categories are based on the type of rent paid, but typically vary in other matters as well. The characteristics of these leases distribute the costs and risks of the farm operation in

Statutes and Cases

Statute of Frauds:

- ▶ Iowa Code § 622.32(3) (2010).
- ▶ Indiana Code § 32-21-1-1(a) (2010).

Iowa Recording Statute:

- ▶ Iowa Code § 558.44 (2010).

Lease Termination:

- ▶ Iowa Code §§ 562.5 - 8 (2010).
- ▶ *Benschoter v. Hakes*, 8 N.W.2d 481 (Iowa 1943) (Establishing the Constitutionality of Iowa's farm lease termination statutes.).

Sample Lease Termination Form

- ▶ Iowa State Bar Association
- ▶ <http://www.extension.iastate.edu/agdm/wholefarm/pdf/>

different ways, which can have a large impact on the tenant's motivation and perhaps ability to adopt sustainable practices. The basic characteristics of the different lease types are discussed below, but a more in-depth examination of how these characteristics impact the adoption of sustainable practices will be found in Chapter Five, "Key Considerations for a Sustainable Lease."

It is also important to consider the effects of the type of lease you choose on self-employment and income taxes, estate planning, social security benefits, and farm program payments. Generally, crop-share leases, particularly when the landowner "materially participates" in farm management, are more likely to be viewed as self-employment and make the landowner eligible for farm program payments. These matters are discussed further in Chapter Four, "Farm Leases, Sustainability, and the Law."

- **Cash Rent.** Cash leases specify a dollar amount for rent by the acre or for the entire farm. Typically, the landowner provides the land but does not share in the costs or management of the farm operation. This type of lease places nearly all of the costs and risks of the farm operation on the tenant. Landlord-tenant communications are also generally fewer than in crop-share arrangements.
- **Crop-share.** Crop-share leases establish a percentage of the harvested crop that is owed to the landowner as rent. A crop share lease might also specify who will be responsible for storing and hauling the landowner's share of the crop. Because the rent is based on the productivity of the farm and is subject to fluctuations in the market price of the crops raised, the risk of farming is shared between landlord and tenant. Typically, a crop-share landlord also shares the costs of the operation and may engage in management decisions as well. This allows the tenant greater room to experiment with alternative practices and reduces the amount of capital required by the tenant. Custom often dictates a 50/50 crop share arrangement, though an equitable lease will ensure the share of each party is proportional to the party's contribution. This is particularly important when engaging in creative cost sharing arrangements to encourage sustainable practices. Any cash rent for pasture or buildings should also be included in the lease agreement.
- **Flexible Cash Rent.** A flexible, or adjustable, cash lease provides a middle-ground between a straight-cash rent and a crop-share arrangement. The tenant pays the landlord in cash, but the amount is based on the yield, market price, or both. The parties

Additional Resources:

Rental Rates and Sample Leases: Iowa State University Extension, Whole Farm Decisions: Leasing

- ▶ Provides average rates by county, as well as methods for determining rental amount for cash rent, flexible rent, and crop-share arrangements.
- ▶ Available at www.extension.iastate.edu/agdm/wdleasing.html.

Iowa Farm Leases: Legal, Economic, and Tax Considerations

- ▶ A publication by Iowa State University's Center for Agricultural Law and Taxation that provides further information on the business and estate planning effects of the different lease types available.
- ▶ Available at <http://www.calt.iastate.edu/briefs/CALTLegalBrief-LeaseLegalIssues.pdf>.

often establish a base rent which must be paid regardless of production and revenue, and sometimes establish a ceiling that the rent will not exceed. This method reduces the risk for the tenant while decreasing the management required from the landowner.

6. Contribution to Expenses and Management

Generally, landowner's contribute more to the expenses and management of the farm operation in a crop-share lease than a cash rent lease. However, it is important for the contributions of each party to be established regardless of the lease type. This not only ensures the parties understand their respective responsibilities, but it also holds the parties accountable for those contributions. Sharing the costs of the operation can be particularly helpful to beginning farmers or when sustainable practices are required that have additional expenses or an added amount of risk.

7. Purpose of the Agreement

The purpose can relate to both the type of relationship formed by the agreement and the reason for entering the arrangement in the first place. Therefore, a farm lease will typically communicate the intent of the parties to enter a landlord-tenant relationship for the purpose of agricultural production.

- **The Type of Endeavor.** Stating the agricultural purpose of the agreement assures the tenant's right to use the land for farming and certain other uses, but also restricts the activities the tenant may engage in upon the property. It is important to understand state law relating to a tenant's land use rights beyond the farming operation and the use of additional lease provisions regarding non-farming uses and activities on the property, a matter discussed in "Chapter Four: Farm Leases, Sustainability, and the Law."
- **The Type of Relationship Formed.** The landlord-tenant relationship is governed by state law. Iowa, like a number of other states, has landlord-tenant laws relating specifically to the rights and duties of parties to an agricultural lease. In order to ensure these laws are applied to the arrangement it is important for the lease agreement to clearly establish the intent of the parties to enter a landlord-tenant relationship. It is also important to establish that other relationships, such as that of a partnership, do not exist in order to avoid additional liability for purchases made by your tenant or any negligent acts of your tenant. Many leases contain provisions stating that the lease does not create a partnership and that neither party has the authority to obligate the other without written consent.

8. Allowed and Prohibited Uses

Both parties should understand the allowed and prohibited uses of the property. Land use restrictions can apply to the entire farm, such as prohibiting the subleasing of the property for recreational purposes, or can specify limits on certain parts of the property, such as protecting permanent pasture. Uses beyond the scope of agricultural production that might support the sustainability of the operation, such as a farm stand, are also important to include. It is also important to address the landowner's rights regarding the property, such as entering to inspect or prepare the land for the following year.

9. Conservation

Leases often contain provisions addressing conservation on the property. Conservation provisions range from placing a duty on the tenant to prevent soil erosion where feasible to the adoption of conservation plans and clauses requiring or prohibiting specific practices. While the relationship of such provisions to sustainability is fairly obvious, not all conservation

provisions are created equal, and a more in-depth discussion can be found in “Key Considerations for a Sustainable Farm Lease.”

10. Repairs and Maintenance

Typically, the tenant is responsible for the expenses and labor associated with repairs that do not require skilled labor and the routine maintenance needed to prevent the deterioration of the facilities. The landlord is usually responsible for major repairs and replacement of farm structures.

11. Improvements

Farm improvements, including everything from fences and tiling to conservation structures and soil amendments, can provide significant benefits for the tenant. However, they can also require a lot of capital to complete, and the full benefits may not be realized during the term of the lease. It is important the lease address the landowner's consent regarding the tenant undertaking improvements, the contributions of both parties in completing improvements, the tenant's ability to remove mobile improvements at the end of the lease, and reimbursement for the remaining value of improvements left on the property at the end of the lease. A lease supplement detailing the contributions of the parties and ensuring reimbursement for the undepreciated value of conservation easements is provided Iowa State University Extension's Ag Decision Maker site, which is listed in the Additional Resources panel above.

12. Landowner Rights

A lease conveys the owner's right of exclusive possession to the tenant for a specified period of time. Therefore, in order for the landowner to enter the property it is necessary for the lease to reserve certain rights to the landlord. Consideration should be given to the landlord's right to enter the property to inspect, make repairs, and care for the land and crops should the tenant fail to do so. As mentioned previously, the landowner might also wish to reserve rights in relation to recreational uses such as hunting and fishing.

13. Remedies for Default

The law provides certain remedies when one party breaches the terms of a contract. However, the parties are free, in part, to agree to their own remedies in case of default. Possible remedies include termination of the lease, the right of the landlord to enter the land to care for and harvest the crop, and liquidated damages. It is important to understand the limitations that are placed on the remedies to which the parties might agree. The inclusion of such remedies are particularly valuable for landowners concerned about entering a long-term lease with an untested tenant. Remedies for default are discussed further in Chapter Four, “Farm Leases, Sustainability, and the law.”

14. Insurance and Liability

It is also recommended to address issues of insurance and liability in your farm lease. Most often the landowner requires the tenant to purchase and provide proof of a certain amount of insurance. In addition, the parties generally include provisions regarding liability for certain conditions and actions. For instance, the landowner often indemnifies the tenant for existing environmental violations and the tenant indemnifies the landowner regarding actions taken on the land during the course of the lease. Such provisions are particularly important and may need to deviate from typical form lease provisions if the parties address recreational uses or on-farm marketing.

15. Dispute Resolution

As discussed, a written lease drafted after communicating concerns and goals with your tenant can reduce the number, as well as the costs, of conflicts between you and your tenant. However, even the most carefully drafted lease may still give rise to disputes. For this reason, and in light of the costs in time and money for a resolution through the judicial system, the parties should consider a provision establishing alternative avenues for dispute resolution.

Arbitration and mediation can provide tools to resolve disputes in a manner that reduces costs and is more likely to allow for the continuation of the lease relationship—an important matter for a sustainable lease arrangement. Some provisions mandate binding arbitration, meaning the parties are obligated to abide by the decision of the arbiters, while others require participation in alternative dispute resolution but allow the parties to seek legal remedies if dissatisfied by the outcome. Again, it is important in developing a lease to recognize the role arbitration and mediation can play in the continuity and, therefore, sustainability of the landlord-tenant relationship.

16. Transfer of Interest

Farm leases often contain restrictions on the ability of either party to transfer their interest in the property. Restrictions usually require the tenant to obtain the consent of the landlord before subleasing or assigning their lease interest. This is an important means for landowners to ensure a competent tenant, who shares or at least understands the priorities of the landowner, is farming the land. The tenant's interest in the lease is protected by provisions stating that any sell or other transfer of the ownership of the property is subject to the lease. This creates greater tenure security for the tenant, which provides greater incentive for conserving the farm's resources. It is still a good idea, and is sometimes required by law, to record the lease to ensure security during the lease term.

Many leases also provide that the lease will be binding on the heirs and successors of the parties. This also ensures some amount of continuity in the lease arrangement. This provision is in line with the law of most states, holding that leases constitute an interest in real property and as such are inheritable and devisable. This aspect is particularly important to ensure the tenant's tenure in the property. It should be noted that some leases and state laws allow for the termination of leases for a term of more than a year in which the tenant has died or become otherwise incapacitated. While this can hinder the continuity of the lease arrangement it also allows for the termination of a lease where the heir or successor tenant might lack the ability or desire to farm the property in a sustainable manner.



Chapter Two: Determining Priorities

Questions to Ask Yourself

The Importance of Establishing Your Priorities

Farm leases come in a variety of forms. This is because there are a variety of landowners and tenants, all with different concerns and motivations when entering a lease. Stewardship of the land and the sustainability of the farm operation are often important concerns for landowners, but are by no means the only concerns. Landowners also have to consider their finances, estate planning, tax issues, social and family concerns, as well as personal preferences such as, perhaps, enjoying retirement.

It's also important to recognize that not all landowners have the same values. Some may merely want to ensure compliance with an NRCS conservation plan or to maintain eligibility for future government programs, while others may have specific concerns regarding water quality or assisting new farmers. Fortunately, there are a variety of lease mechanisms available to match different landowner concerns, while still promoting sustainable farm practices.

Before examining the different ways sustainability can be promoted in a lease arrangement it is first necessary to determine what your essential priorities are and where you have room for flexibility in negotiating the lease contract. This will help enable you to develop a lease that is suitable to you and your tenant while promoting the adoption of sustainable practices. After all, a lease can only promote sustainability for as long as it is in effect. A lease containing numerous ways to encourage your tenant to adopt sustainable practices and conservation clauses covering every aspect of good stewardship is not sustainable if your essential needs are not met.

You might also need to recognize that while creative solutions to certain constraints are available, circumstances may initially limit your ability to achieve the level of stewardship you desire or to address other sustainable issues, such as leasing to a beginning farmer. However, immediate roadblocks should not discourage the adoption of lease provisions that support gradual steps toward a truly sustainable farm operation. It may be encouraging and more effective to think of sustainability as a process rather than an end result. Determining your priorities can help you understand your own limits, which then allows the development of a lease that begins the process of sustainable farming.

In short, determining your priorities will effect the type of lease you will enter. Its important to establish the priority of certain factors to properly analyze the type of lease and important clauses you should consider and to determine where you have room for flexibility.

Questions to ask yourself

These questions are meant as examples of some issues you might consider. Your particular situation could require other considerations. If reading this guide through the Sustainable Farm Lease website at www.sustainablefarmlease.org, you can view additional information on specific topics by clicking the links in the answers.

What are your long-term plans for the property?

- ▶ Sale?
- ▶ Development?
- ▶ Transfer to family?
- ▶ Agricultural or Conservation easement?
- ▶ _____

What are the characteristics of the property?

- ▶ Highly erodible land (HEL)?
- ▶ Wetlands?
- ▶ Floodplains?
- ▶ Woodlots?
- ▶ Karst Topography?
- ▶ Wildlife Habitat?
- ▶ Is a house located on the property?
- ▶ Existing conservation problems?
- ▶ _____
- ▶ _____
- ▶ _____

Do you have room for flexibility regarding rental income?

- ▶ Can you afford to reduce the rent?
- ▶ Can you afford to share certain expenses?
- ▶ Can you share any of the risk (and reward)?
- ▶ No, I rely on rental payments as my primary income.

Do you have the time, experience, or desire to participate in the management aspects of the farm operation, and if so, what aspects of the operation are you interested in?

- ▶ Operational decision-making?
- ▶ Organic certification?
- ▶ Marketing?
- ▶ Participation in federal farm programs?

Do you have specialized equipment the farm operator can use?

Can you provide secure land tenure, or a long-term lease?

- ▶ No, only one or two years
- ▶ Yes, three to ten years
- ▶ Yes, ten years or more

Are you interested in assisting a new farmer?

Are you willing to allow public recreation on the site?

Are you willing to allow on-farm marketing?

Are you interested in leasing to a smaller diversified operation?

Do you want to transition to organic production?

What particular concerns do you have regarding the sustainability of your farmland? (Again, the answers here are by no means an exhaustive list.)

- ▶ Conservation of soil and other on-farm resources
- ▶ Integrating livestock
- ▶ Rejuvenating neglected land
- ▶ Woodlot management
- ▶ Improving water quality
- ▶ Mitigating climate change
- ▶ Increasing biodiversity
- ▶ Wildlife habitat
- ▶ Encouraging integrated pest management
- ▶ _____
- ▶ _____
- ▶ _____

Are there any restrictions on the use of the property?

- ▶ Existing leases?
- ▶ Easements?
- ▶ Zoning restrictions?
- ▶ _____

Is an agricultural lease the right choice for you?

- ▶ This will depend on the answers to several of the questions above. For instance, if you are not dependent on income from leasing the property, place a high value on wildlife or other conservation concerns, wish to retain rights for private recreation, and you might find a conservation easement more appealing.
- ▶ Conservation easement?
- ▶ Custom farming?

After examining your own priorities it is time to talk to the tenant. Remember, setting priorities to discuss with the tenant and knowing where you can be flexible increases your chances of creating a win/win situation and a longer, more sustainable tenancy.



Chapter Three: Talking To Your Tenant

Understanding and Communicating

Communicating effectively with your tenant is important for a number of reasons. Communication at the outset of the relationship is critical to ensure the goals and priorities of each party are understood and addressed in the lease agreement. Communication is also important during the lease term to aid the development of a long-term relationship, boost the tenant's confidence in the landowner's commitment to tenure security, and promote awareness of any weaknesses and modifications needed in the lease arrangement. Remember, a sustainable lease is only beneficial so long as it meets the needs of both parties.

This chapter primarily addresses the initial conversations between landowner and tenant, including the need to understand some basic agricultural, conservation, and lease concepts; the importance of understanding the position of the other party; and the need for communicating your priorities and limitations to your potential tenant to find ways that promote profitability as well as sustainability. Continuing communication during the lease is briefly addressed below in the section on retaining a good tenant.

Understanding Important Terms and Concepts

In order to effectively communicate with your tenant it is necessary to speak the same language. This means gaining an understanding of, or at least knowing where to access information about, certain agricultural terms and concepts. You have already had an introduction to the fundamentals of sustainable agriculture and farm leases. It's not necessary to become an expert on sustainable agriculture and farmland leasing before talking to your tenant, but it is important to know where to look for additional information. Remember, there are some issues, such as legal matters, that may require professional assistance.

There are a variety of resources available to provide more in-depth information on specific agricultural topics. Many of these resources can be found under the *Resources* and *Glossaries* tabs of the SALT website (www.sustainablefarmlease.org) or, if not viewing this guide online, through the organizations and professionals described in the Introduction.

It is also beneficial to stay informed about agricultural policy and the economics of farming, including land values, rental rates, crop prices, and input costs, such as seed, fuel, and fertilizer. University Extension offices often conduct research and present information on the agricultural markets of specific states. This can be particularly helpful when negotiating cash rent or cost-sharing provisions.

Additional Resources:

Iowa State University Extension, Iowa Farmland Rental Rates

- ▶ State-wide and county farmland rental rates are available here on a yearly basis.
- ▶ Available at <http://www.extension.iastate.edu/agdm/wholefarm/html/c2-09.html>.

The USDA's Economics, Statistics and Market Information System (ESMIS) and Agricultural Marketing Service

- ▶ Provides daily and weekly reports on agricultural markets, production, and weather.
- ▶ ESMIS is located at <http://usda.mannlib.cornell.edu/MannUsda/homepage.do>.
- ▶ AMS can be found at <http://marketnews.usda.gov/portal/lg>.

FarmPolicy.com

- ▶ Provides daily summaries of farm policy news regarding a variety of topics across the country.
- ▶ Located at <http://www.farmpolicy.com>.

Understanding the Tenant's Perspective

Just as it is important to understand your own priorities it is also important to understand the needs and limitations of your tenant. As mentioned previously, a lease that encourages a tenant to adopt sustainable practices may require additional effort, and possible sacrifices, on the part of the landowner as some practices may create inconveniences and extra costs for your tenant. It may be necessary to alter certain terms to eliminate or mitigate the hardships created. This section discusses some common issues faced by tenants that may need to be addressed to promote the sustainability of the lease agreement. It should be noted, however, that different challenges will arise with different tenants.

Engaged in Fierce Competition for Land

One of the defining characteristics of current farm tenancy is a fierce competition for land. Farmers are consistently under pressure to find more land to farm. In order to continue a profitable farming enterprise it is necessary for many farmers to expand the amount of land they farm. This is one of the reasons many farmers own their own land but also rent additional farmland. As farmers compete for limited land resources, the value of land and rental rates increase.

This competition for land provides you, as the landowner, greater negotiating potential. This means tenants may be more willing to go along with sustainable practices they might not otherwise consider. However, the farm operator's need for additional land must be weighed against other characteristics of the tenancy situation that decrease a tenant's willingness or ability to adopt sustainable farming. These other characteristics are discussed below.

Another consequence of competition for farmland is a lack of access to land for new farmers. However, this may, in itself, create opportunity for a landowner wishing to adopt sustainable practices and a new farmer looking for land. For instance, a beginning farmer might be more open to using non-conventional farming techniques than a large, established operator. Due to the fact that many new farmers lack start-up capital this may require you to consider additional cost-sharing and risk-sharing. But, this opportunity could produce a long-term relationship and encourage a beginning farmer to utilize sustainable practices. The benefits and methods of

assisting a new farmer are discussed further in the final chapter, "A Few Additional Considerations."

A Lack of Incentive (or Ability) to Adopt Sustainable Practices

Tenant farm operators typically have little motivation, or perhaps little ability, to adopt practices that improve the long-term sustainability of the operation. This is not, of course, necessarily because tenants are unconcerned with the impact of their practices, but rather because the terms of many leases combine with economic conditions to prohibit tenants from adopting long-term practices that can improve the sustainability of the operation. There are several factors causing this situation. Examining these factors can create a greater understanding of the obstacles faced by tenants and assist in developing creative lease arrangements to overcome these obstacles.

1. **Short Lease Terms.** Short farm lease terms give tenants little security that they'll receive the benefits of long-term investments. In a recent Iowa State University Extension survey (available at <http://www.extension.iastate.edu/Publications/FM1811.pdf>), 80% of the farm leases in Iowa were year to year leases, and of the remaining 20% the majority were for less than two years. Meanwhile, the benefits of many sustainable practices, such as crop rotations, take years to accrue. The combination of the time required to recognize benefits from sustainable practices and short lease terms is a principle contributor to the ability of tenants to adopt long-term sustainable practices.

The most obvious and probably most effective means for overcoming this obstacle is to increase the term of the lease. Other methods are available, however, for those unwilling or unable to enter a long-term lease. These primarily consist of sharing the risk of production, sharing the costs of production, or relying on specific conservation provisions. These alternatives to providing a long-term lease are discussed throughout Chapter Five: Key Considerations for a Sustainable Lease.

A Lack of Specialized Skill and Equipment. In addition to more time, many sustainable practices require skills and equipment that are different from those required for more conventional agricultural practices. In addition, tenants are motivated to use their equipment on as much land as possible to get the most out of their investments. Tenants, on average have three landlords, and some have as many as twenty, and they don't want to purchase different equipment for each piece of property.

Recognition of this limitation enables the development of creative solutions. Such solutions can include simply finding alternative methods of accomplishing sustainable goals within the tenant's ability, sharing the costs of hiring specialized labor through custom farming or of leasing the needed equipment, and purchasing specialized equipment to be shared or leased to the farmer. It should be noted that this situation might also create opportunities for farm operators to specialize in providing sustainable farming practices to landowners.

3. **A Focus on Maximizing Production.** Increasing rental rates and input costs can also affect a farmer's ability to adopt sustainable practices. These factors force the tenant to focus on short-term productivity in order to stay profitable and compete for additional land to farm. Rental rates are governed in large part by land values and the price of commodities. Land prices have risen dramatically in recent years, driven in part by land speculation, demand for open land for development and recreation, and biofuels production. In addition, commodity prices have seen record highs, but have also remained unsteady and unpredictable, which results in higher rents but not necessarily rents that match current commodity prices. In addition, as

commodity prices have increased, so to has the cost of inputs, which eats into any revenue increases a farmer might have seen from higher commodity markets.

Hesitance About Discussing Sustainability With Landlords

Many farm operators are willing to consider sustainable practices but are hesitant to start a conversation about conservation or sustainability with potential landlords. In addition, many tenants consider land stewardship the landowner's responsibility.

The prevalence of this type of situation means that you may need to initiate the conversation about ensuring the sustainability of the land. After all, as the landowner, you will retain the land after the lease expires, and you are ultimately responsible for the stewardship of the land.

A Tenant's Perspective:

"We talked a little bit about things like ridge till and cutting back on how many chemicals I applied in one of our first meetings. I guess he thought I was trying to get at something because he immediately asked, 'you're not one of those organic farmers are you?' and he didn't mean it as a compliment. Right there I knew that I better just do what he wanted if we were going to make this relationship work."—tenant (Michael Bell et al., *Professional Development for the Adoption of Sustainable Agriculture on Rented Land*, 10 (2001)).

Social Dimensions of the Landlord-Tenant Relationship

It is also important to recognize that farm leases do not take place in a social vacuum and the terms of a lease might depend more on social relationships than on economics. When dealing with close friends or family it is important to recognize distinct aspects of the relationship that might create tension regarding sustainable practices. This can help ensure sustainability while addressing potential relationship disruptions. It is important to have upfront discussions at the outset of the lease arrangement to address not only sustainability issues, but also the roles of each party in the lease relationship. Establish expectations and roles before entering the lease rather than run into problems during the lease term.

Finding the Right Tenant

As in any interpersonal relationship there are a variety of characteristics to look for in a tenant. Of course, it will be important to find someone that can meet the financial demands, primarily paying the rent, but there are other factors you might also consider. Because a stable, long-term landlord-tenant relationship is a key consideration in encouraging sustainable practices, it is important that the landlord and tenant be able to communicate and trust one another. Therefore, honesty and integrity may be just as important as having sound financial records.

The characteristics to look for in a tenant might also depend on the type of lease you decide to enter. For instance, if wanting to assist a beginning farmer you should make sure they have an achievable business plan, even though they might not have the financial resources and equipment of a large operator. If looking to adopt organic production on the property you will need to find someone with the skills, or at least the desire, to do so. And, if you are dependent on receiving rental payments, it is important to look for a tenant with a sound financial record and references. No matter what type of lease you enter the importance of a tenant's character and ease of communications with your tenant should not be superseded by a tenant promising "top dollar" that cannot follow through or that injures the resources of the property.

While traditionally landowners and tenants were often already familiar with one another, sometimes coming from the same community or family, it is becoming more common for landowners to use tenants with whom they have had little to no previous interactions. Under such circumstances, the landowner must find different ways to check the tenant's ability to deliver on their lease obligations as well as their reputation as a tenant. It is becoming more common for tenants to provide a resume, and you should not feel uncomfortable asking for references, particularly from past landlords or employers.

Additional Resources:

The following organizations have additional information on landlord-tenant relationships and assist in linking landowners with farm operators.

- ▶ The International Farm Transition Network found at <http://www.farmtransition.org>.
- ▶ The Beginning Farmer Center's Farm On Program at <http://www.extension.iastate.edu/bfc/programs.html>.

It is also worth noting that the parties should discuss expectations regarding the farm operation and how the farmer's performance will be measured. For instance, many tenants fear that their landlords will see the appearance of weeds on the property as an indication of poor farming skills or a lazy tenant. As certain sustainable practices may make it difficult to prevent or in some cases unnecessary to completely eradicate weeds, it is important to make sure the tenant knows that you will take such consequences of sustainable farming practices into consideration.

Overall, it is important to come to a win/win arrangement in which both parties feel they are receiving a reasonable return from the lease. It is important to remain flexible without losing sight of your priorities in order to reach a mutually beneficial arrangement. If

either party feels as though the lease is unfair in some manner, it jeopardizes the relationship, the continuity of the lease, and the future sustainability of the farm.

Keeping the Right Tenant

Developing a sustainable lease that is profitable to both parties requires effort, particularly at the outset of the relationship. This makes it particularly important to retain a productive and honest tenant once a relationship has been established. It should also be noted that a landowner should not feel obligated to retain an unfit tenant. As a landowner, you are ultimately responsible for the stewardship of the land, and if a tenant does not comply with the terms of the lease or has irreconcilable views in relation to the operation of the farm, it may be better to end the relationship and find a new tenant. Of course, if ending the relationship is required, careful consideration should be given to your state's lease termination laws — a subject of the following chapter.

There are several things that can be done to increase the continuity of the lease arrangement and further improve the landlord-tenant relationship. These endeavors not only aid in the sustainability of the farm but also reduce transaction costs in terms of time, money, and even reputation.

1. Maintain communications throughout the lease term. Communications can be set at regular intervals as specified in the lease arrangement or can casually take place at logical times such as before planting, after harvest, or at special occasions such as holidays or special family occasions. It is important to consider the content of required communications. For instance, requiring a report on certain aspects of conservation or nutrient management can

emphasize the importance of these matters to the tenant while keeping you informed about important stewardship concerns.

2. Remain open to modifications. As discussed above, the parties should try to address all possible situations that could arise under the lease arrangement. While it is not possible to predict all future events, it is possible to control how you react to changes in circumstances. Just as it is important to remain flexible in the initial lease negotiations to allow the tenant to accomplish sustainable objectives in a manner favorable to their particular circumstances, it can also be beneficial to remain open to renegotiations for matters that have not been addressed or arise due to altered circumstances. Again, the caveat must be included, that you, as the landowner, are ultimately responsible for the stewardship of the land, and any adjustments must be weighed in relationship to this duty. It also worth reiterating that any modifications to lease terms should be documented in writing and signed by both parties.

3. Allow for the correction of mistakes without destroying the relationship. If the tenant is farming in a manner outside the scope of the lease arrangement, the tenant should be dealt with in a manner that enables them to fix the problem without harming your relationship. A provision in the lease agreement that gives you the right to terminate the lease in case of default but also allows a window of opportunity for your tenant to fix any breaches protects the land while promoting tenure security and an enduring landlord-tenant relationship.



Chapter Four: Legalities

Farm Leases, Sustainability, and the Law

Legal citations are provided in this chapter to assist in further understanding the legal obligations of the parties. However, as stated in the disclaimer at the beginning of the Guide, the law is subject to change, and this information should not be considered a substitute for consultation with a legal professional.

It is not the purpose of this chapter to provide a complete discussion of all landlord-tenant laws and regulations. Rather, it is to provide an overview of matters necessary for lease formation and examine some of the most relevant legal matters impacting sustainable lease arrangements.

The law impacts the landlord-tenant relationship in several ways. These impacts occur through (1) contract law (2) laws directly aimed at influencing the landlord-tenant relationship, (3) laws that provide different treatment of the parties based on the terms of the arrangement, and (4) lease provisions that incorporate laws into the agreement. It is important to understand how the terms of a lease arrangement interact with the law in order to develop provisions that are legally enforceable and take external considerations, such as tax and estate planning issues, into account while promoting the sustainability of the farm operation.

Contract Law

A lease is a type of contract. As such, it must meet certain legal requirements to be enforceable in a court of law. It is important to understand both how a contract is formed and how the courts will interpret that contract.

Elements of a Contract

In order to have a valid contract it must include certain elements. These elements are not difficult to show in a farm lease arrangement.

1. **Competent parties:** A party having capacity, the ability to understand the nature and effects of one's acts, to enter a binding contract. This usually means having reached a certain age and being of sound mind. Landowners and farm operators are not usually minors or mentally incapacitated, but this does emphasize the importance of setting up a power of attorney and a will or trust.
2. **A legal subject matter:** The purpose of the contract must be legal. The subject matter of a farm lease is agricultural production, which is, perhaps with a couple of exceptions, a legal enterprise.

3. An offer: A promise to do or refrain from doing something in exchange for something from the other party and made in way that a reasonable person would expect a binding contract to arise from its acceptance. The offer can be made by the landowner or the tenant.
4. Acceptance: A display of willingness to be bound to the terms of an offer. Any modification or addition of terms is not acceptance but a counteroffer. Offer and acceptance, particularly where the parties have signed a written agreement, is expressed in the lease agreement.
5. Consideration: Something of value or a promise to do or to refrain from doing something. The innate nature of the lease arrangement, exchanging the use of one's property for the payment of rent, provides consideration by both parties.

The Statute of Frauds

The requirements of the statute of frauds has been discussed previously in the section on "Farm Lease Basics," but it is worth mentioning again here. The typical statute of frauds renders contracts involving real estate unenforceable if not put in writing. However, many states, including Iowa, have made exceptions to this rule for leases of a year or less.¹ This means that any lease for over a year must be in writing and it must contain the signatures of the parties.

Additional Contract Considerations

In his book, "A Farmer's Guide to Production Contracts," Professor Hamilton sets out twelve rules that should be considered when entering a contract. This list is provided below, though modified to address farm lease arrangements.

1. Remember the first rule of contracts – whoever wrote the contract took care of himself. This can give the party that presents the lease a substantial amount of control. It is important to remember that a sustainable lease takes the interests of both parties into account to create a lasting relationship. There are many times that farm tenants present their own lease forms, particularly if they lease from several landowners. If this is the case it is particularly important to ask questions about provisions, and you shouldn't feel uncomfortable by asking to have an attorney look over and explain the contract.
2. Read and understand any contract before signing it. Because the words in the contract will be enforceable in the future, you need to understand what you are promising to do and what you can and cannot hold the other party responsible for. This holds true whether the tenant provides the lease or you use a form lease from a university extension or state bar association. It is important, particularly when promoting sustainable practices, not to assume a lease provides adequate protection without fully understanding its terms. If the lease is relatively large or complex you should consider having your attorney go through the contract with you to make sure you understand all of the provisions.
3. Know that complying with contract terms is required before you have performed under the contract. If you are not able to perform the promises you make in the contract the tenant may have the option of terminating the lease and may bring a suit for breach of contract. This is particularly important in creative leasing arrangements that require more participation from the landowner, such as completing the necessary paperwork for organic certification. Because of this, you will want to make sure you are able to live up to the promises you make in the contract or be willing to pay the consequences.

¹ IOWA CODE § 622.32(3) (2010).

4. Never assume your failure to perform a contract will be excused. If the tenant is damaged by your failure to perform under the contract, assume you will have to make amends. If you think you will not be able to fully meet your obligations under the lease, it is usually best to let the tenant know so both of you can deal with the situation. You may be able to negotiate a substitute arrangement.
5. Know the other party's financial situation and performance history. This is important in any lease, but particularly so in long-term agreements. Some tenants may provide resumes or references for you to check. A beginning farmer may lack capital and any history of performance. Through recognition of such problems an arrangement can be reached that minimizes your risk while allowing you to enter a lease with a new farmer.
6. Weigh the advantages of the contract against any increased costs or risks. Developing a sustainable lease may require alternative approaches to the farm lease arrangement. Before signing the lease you should make sure the lease arrangement will continue to meet your financial needs.
7. Remember proposed contracts are always subject to negotiations. Many agricultural leases use fixed "boilerplate" language. But all contracts are negotiable before signing; nothing forces you to sign the contract until you are satisfied with the deal. It is particularly important when developing a sustainable lease from a typical agricultural form lease to recognize that the terms provided in the lease can be modified. But, careful attention should also be paid to how modifications affect the rest of the lease.
8. Make sure any changes to the contract are made in writing. Although it can be difficult to change a contract after it is signed, shifting conditions can persuade both parties it is in their best interest. To ensure the changes are enforceable, the new terms need to be in writing and signed or initialed by both parties.
9. Do not rely on oral communications made by the other party, either before the contract is signed or during the contract performance. If your lease ever has to be interpreted in court, the court will most likely rely only on the written language of the contract itself. Courts usually refuse to accept evidence of oral agreements that goes against the contract language, and most form leases include a similar restriction. Because of this, you will want to get in writing any agreements important to you. If you are unable to do this, then make sure to keep copies of any documents, such as letters, payment sheets, and checks you can use to show what was agreed to.
10. Keep good records of your performance. You never know when you will need to prove you have lived up to your end of the bargain. Keeping good records is the only way to do this. This is especially true when a crucial part of the lease requires you to make a certain contribution. Whether it is contributing to the costs of production, providing specialized equipment or labor, or taking care of legal work, if you have records indicating you have done what you promised, you can avoid headaches in the future.
11. Do not hesitate to ask questions when you do not understand what is happening. The best time to ask questions about what you are promising to do is before you promise to do it. This is especially important for landowners that do not have farming backgrounds or are unfamiliar with farm lease arrangements. To make sure you understand the terms of the contract, you can ask questions of a potential tenant and your advisors. The Introduction to this guide provides a description of places where you can obtain additional assistance.

12. Stay in touch with the other party to the contract. Regular communication with the renter will help prevent misunderstandings about the lease or about what is required to satisfy the lease requirements. Open lines of communication will help parties make sure that each is doing what the other party understood they would do. Increased communication also boosts tenant confidence in the stability of their tenure, a critical element to a sustainable lease agreement.

Landlord-Tenant Law

State legislatures have seen fit to prescribe certain rights and responsibilities for landlords and tenants in a farm lease agreement. It is important to understand how and when these laws apply.

There are some mandatory rules that apply to a lease arrangement regardless of the provisions in the agreement or the intention of the parties. This means the parties are not bound by lease provisions that contradict the requirements established by these laws. An example of such a law is Iowa's notice of termination statute.² Iowa courts will not recognize an agreement within a lease to do away with the requirement to provide notice of termination.³ Entering a lease without recognizing such laws can result in confusion, disappointment, and damage to the sustainability of the operation.

Other laws are discretionary or only applied where a lease agreement is silent. In such cases the parties are free to agree to terms that do not coincide with rights and duties established by the law. This is the case with most of the notice of termination statutes outside of Iowa. While many states have established that notice be given prior to a set period before the termination date, such as 60 days, the parties are free to agree to different notice requirements.⁴ Therefore, these laws are considered merely default provisions if the parties don't address the issue in the lease.

As can be seen in the examples above there is a good deal of variation in the laws from one state to the next. It is especially important to keep this in mind if you decide to rely on any type of sample lease or other lease guide. State specific legal information can be found through your State Extension Office or, of course, by visiting with your attorney. The SALT website, at www.sustainablefarmlease.org, also provides an examination of select farm lease laws and links to related organizations and publications.

Below is a discussion of legal issues with particular relevance to sustainable operations on leased farmland.

Right of Possession

In a lease arrangement the landlord conveys the right of possession to the property and the buildings on that property to the tenant. The tenant has the exclusive

Additional Resources:

"Farm Leases - Legal, Economic, and Tax Considerations"

- ▶ A general examination of Iowa's farm lease laws from Iowa State University's Center for Agriculture Law and Taxation.
- ▶ Available at <http://www.calt.iastate.edu/briefs/CALTLegalBrief-LeaseLegalIssues.pdf>.

² IOWA CODE §§ 562.5-8 (2010).

³ *Benschoter v. Hakes*, 8 N.W.2d 481 (Iowa 1943).

⁴ See for example, Mo. Rev. Stat. §§ 441.050, 060(3), 070 (2010).

right to use the property.⁵ However, there may be limits on this use, either through the express terms of the lease or implied by law.⁶ The sustainability of your land can, therefore, potentially be improved both by establishing specific limits on the use and possession of the property in the lease term and by expressly authorizing uses not recognized as rights given in an agricultural lease. Examples are provided below.

Including Limits on the Tenant's Right of Possession

Any limits on a tenant's right of possession, including the landowner's ability to enter the land, should be stated in the lease agreement. There are several possible limitations, or reservations, that can effect the promotion of an operation's sustainability. These include:

- The right to enter to inspect the property, make necessary repairs and improvements, care for the land, and prepare the land for the following year in the last year of the lease.
- The right to grant easements, especially conservation and agricultural easements or easements to develop renewable energy sources.
- The right to enter the property or allow others to do so for hunting, fishing, bird-watching, or other outdoor activities.
- Land use provisions that limit the manner in which the property is farmed, such as establishing specific crop rotations or protecting permanent pasture.

It is enough for our purposes here to recognize the tenant's right to possession and the need for landowner reservations in order to help address different sustainable issues. More details on the specifics of farm lease provisions that address possessory rights, such as for recreation, are examined in the final chapter, "A Few Additional Considerations." Land use restrictions are addressed in the next chapter under "Conservation Provisions."

Including Land Uses for Activities Beyond Agriculture

As mentioned above, there are also some limitations on the tenant's use of property under a farm lease that are established by law. The Iowa Supreme Court has held that while tenants have the exclusive right to use the land for lawful purposes, the tenant's use can be limited to uses for which the premises are specially designated or constructed.⁷ This could limit uses considered outside the realm of agriculture. In such cases, if a prohibited, or even potentially prohibited, use could be used to promote the sustainability of the operation, a provision expressly allowing the use should be included in the lease agreement. Such uses could include:

- On-farm sales of farm products.
- Agri-tourism activities.

Additional considerations that will need to be addressed if the land use rights of the tenant are expanded include liability and insurance, compliance with zoning and other land use laws, as well as food safety regulations and licenses. These considerations need to be addressed, but should not discourage you from allowing additional uses. Agri-tourism and on-farm marketing can play an important role in diversifying the local economy, providing enjoyable rural amenities, and improving the overall sustainability of the operation and community.

⁵ Chamberlain v. Brown, 120 N.W.334, 337 (Iowa 1909).

⁶ *Id.*

⁷ Verlinden v. Godberson, 25 N.W.2d 347, 349 (1946).

Notice of Termination

Many states, as mentioned previously, have adopted statutes specifically addressing notice of termination procedures for agricultural tenancies. The purpose of these statutes is to assist in stabilizing agricultural land tenure in order to protect the economic interests of the parties, the social structure of rural communities, and the sustainability of the land.⁸

Farm operations depend to a large degree on long term planning. It is important for tenants to know whether they need to find new land to farm or perhaps a new place to live during the next year. Further, both tenants and the land benefit when tenants are assured they will be able to reap the benefits of investments in the land several months or even years later. The ability to do so, therefore, affects the economic and social structure of the farm family and farming community, as well as the sustainability of the land.

In Iowa, the landlord must provide notice of termination on or before September 1, and the notice must set the date of termination as March 1.⁹ Failure to provide notice will result in a continuation of the tenancy from year to year on the same terms and conditions as the original lease, until proper notice is given.¹⁰ These procedures do not apply to farms of 40 acres or less or to share-cropper arrangements.¹¹ As mentioned above, in Iowa, an agreement by the parties set forth within the lease agreement to dismiss termination requirements will not be recognized¹² However, anytime after formation, the parties are free to agree to an early termination, which renders notice of termination unnecessary.¹³

The effect of the various state laws may be debated, but it is critical for both landowners and tenants to understand the termination procedures required in their state and for their particular circumstances. A knowledge of the law can help ensure protection of the rights established by such statutes are not infringed upon, to know the limits of these rights, and to protect the land from continued degradation should the need arise.

Termination for Default

Knowing the procedures for terminating a lease at the end of a lease term is important. However, to ensure adherence to sustainable practices and other lease provisions, it is also valuable to understand when and how you can seek early termination for a breach of your lease.

In general, failing to abide by the terms of a lease or committing waste on the property, a matter discussed further in the next section, is a forfeiture of the tenant's rights in the property and an action of forcible entry and detainer is appropriate.¹⁴ However, due to the nature of agricultural tenancies early termination may be limited, even where lease provisions provide for early

⁸ Benschoter, 8 N.W.2d at 485-487.

⁹ IOWA CODE §§ 562.5-7 (2010).

¹⁰ IOWA CODE §§ 562.6 (2010).

¹¹ *Id.*

¹² Benschoter, 8 N.W.2d at 484.

¹³ Crittenden v. Jensen, 1 N.W.2d 669, 670 (Iowa 1942).

¹⁴ Verlinden, 25 N.W.2d at 349-50.

termination in the event of default.¹⁵ For instance, the Iowa Supreme Court has held early termination of a farm lease in the middle of a crop year creates particular hardships and difficulties that should be avoided.¹⁶ However, where a tenant violates the terms of a lease for a period of years, the landlord may be able to terminate the lease after the current crop year.¹⁷ In such a situation, it is still important the landlord understand and follow the statutory provisions for termination discussed above.

In a case with particularly egregious violations, a landowner may be able to terminate a lease without statutory notice or, perhaps, even during the crop year. The circumstances that allow for such actions are not clearly established and consultation with a licensed attorney is recommended before any actions are taken. A violation of your tenant's rights in the property can have serious consequences, including court-ordered damages, repayment of farm program awards, and ineligibility for future farm program payments.¹⁸ One clear area where you can terminate without statutory notice is when your tenant fails to pay rent.¹⁹

Covenant of Good Husbandry

Many states apply an implied covenant of good husbandry to agricultural leases. Iowa has not explicitly adopted an implied covenant of good husbandry, though the common law does require all tenants to use leased property in a "proper and tenant-like manner" and not to commit waste.²⁰ Further, the Iowa Supreme Court has established a duty of stewardship regarding the state's soil resources.²¹ In light of these rulings, such an implied covenant is likely to exist. This covenant can also be expressly included in the terms of a lease agreement, which is discussed further in the Conservation Provisions section of the next chapter.

The covenant is typically based on the common practices used in the community.²² A covenant of good husbandry, while able to provide some protection against harmful exploitation of a farm's resources,²³ does not necessarily guarantee the adoption of sustainable practices, nor does it completely ensure against harmful practices.

Farmers are often referred to as stewards of the land and the first environmentalists. It seems to reason, therefore, that good husbandry certainly should provide for the stewardship of the land. In fact, good husbandry does descend from the doctrine of waste and does in many cases

¹⁵ *McElwee v. DeVault*, 120 N.W.2d 451, 454 (Iowa 1963) (holding the landlord was able to cancel a three year lease after the first year due to violations of the provisions of the lease regarding the manner in which the property was to be farmed, but the landlord did provide notice of the violations in June and notice of termination in August. The court noted it would have been inequitable for the landlord "to oust the tenant in the middle of the crop year.").

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 7 C.F.R. 1412.55 (2010).

¹⁹ *Riggs v. Meka*, 17 N.W.2d 101, 104 (Iowa 1945).

²⁰ *Verlinden*, 25 N.W.2d at 349-50.

²¹ *Benschoter*, 8 N.W.2d at 487.

²² *Green v. Kubik*, 239 N.W. 589, 592 (Iowa 1931).

²³ *Landas Fertilizer Co. v. Hargrave*, 206 N.W.2d 675, 678 (Iowa 1973).

prevent, or at least hold tenants accountable for, farm practices that deplete the property's long term productivity.²⁴ As stated, however, the covenants usefulness for promoting conservation is limited to the common practices used in the community. This may result in the allowance of farming methods that are unsustainable yet commonly practiced.

In addition, what is considered to be common in the community may be a minority of the members of that community.²⁵ This means that unsustainable practices might be tolerated if the practice is shown to be followed by even a minority of the members. Based on the widespread use of conventional agricultural methods to maximize productivity through heavy reliance on fertilizer and chemical inputs, with limited crop rotation, protection based on the community standard may be insufficient to ensure sustainable farm practices.

While good husbandry does address stewardship, if even in a limited manner, it also is meant to ensure the productivity of the farm and may be interpreted by some as limiting sustainable practices on the land.²⁶ For instance, the presence of weeds on a farm has commonly been seen as a tell-tale sign of poor husbandry. Tenants are very thorough about eradicating weeds, not only as a method of increasing productivity, but also to present an orderly appearance to the farm and to promote the perception of an industrious operation to the landlord and others. This can lead to the use of additional chemicals to eradicate any sign of weeds. Such a focus on presenting an outward appearance of good husbandry based on conventional attitudes can, therefore, actually be detrimental to the adoption of sustainable practices. This provides another reason, as discussed in "Talking to the Tenant," to ensure both parties understand the priorities and expectations of the other.

It should be noted that the inclusion of a good husbandry provision does provide some measure of protection and has a place as a catch-all should other provisions fail. The parties to the agreement are also free to adopt a good husbandry provision with a higher standard than that of the community. The possible content and effect of such provisions are discussed further in the Conservation Provisions section of the next chapter.

Crop Residue

Crop residue—the part of a plant typically left on the field after harvest, such as corn cobs and stover—plays an important role in the replenishment of soil nutrients, the conservation of the soil, and water retention. However, due to the increasing value of crop residue as a source for the production of biofuels the off-farm value of residue has increased.

The impact of crop residue on long-term productivity and soil conservation affect the landowner and tenant in distinct ways depending on the duration and type of lease arrangement. The tenant, if under a year to year lease arrangement, has little incentive to leave the residue on the farm, and may instead prefer using increased inputs to boost short-term production. This not only decreases long-term productivity, but also has the potential to pollute surface and ground water resources.

It is in the interest of the landlord to ensure at least part of the residue is not removed from the property. The necessity of including a provision to this effect depends on state law. Most states address this issue solely through the common law. While the common law does typically grant

²⁴ *Id.*

²⁵ *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 904-905 (Iowa 1981) (Reynoldson, J., dissenting).

²⁶ *Thompson v. Mattox*, 695 N.W.2d 505 (Iowa Ct. App. 2007).

the tenant the right to remove residue,²⁷ this right might be limited if the removal can be shown to violate a covenant of good husbandry.²⁸

The Iowa legislature has enacted a statute specifically addressing the issue. Iowa tenants have the statutory right to remove any crop residue from the leased property.²⁹ However, the landowner can provide a written provision within the lease agreement to prevent the removal of crop residue.³⁰ The language used in such a provision should be careful to include all crop residue. Other terms, such as stover and stubble, have been determined by an Iowa court to define only part of the residue left after harvest.³¹

In short, any landlord, in any state, wishing to ensure crop residue remains on the property should consider a provision specifically limiting the removal of residue.

External Legal Considerations

It is important to take all of the legal consequences of a lease into consideration in order to develop a lease arrangement that promotes sustainability while protecting the interests of both parties. The type of lease arrangement and specific provisions can have a significant impact on how the parties are treated under various laws. Consideration should be given to participation in government farm programs, tax liability, social security benefits, and estate planning.

In general, landlords of cash rent arrangements are not considered actively participating in the business of farming. This means the income is not treated as self-employment income, does not count toward social security benefits in retirement, USDA cost-sharing payments are not excludable from income, and soil and water conservation expenses and the costs of lime and fertilizer are not deductible for federal income tax purposes. For landlords involved in a crop-share or livestock-share agreement, the determination of such matters will, in large part, depend on whether there is material participation by the landowner in the business. The specific provisions of the lease regarding management and cost-sharing can play an important role in this determination. The parties can also include a provision specifically stating their intentions in regard to material participation.

Additional Resources

Natural Resources Conservation Service (NRCS)

- ▶ Administers many of the federal programs providing financial and technical support for natural resource conservation.
- ▶ Program descriptions are available at <http://www.nrcs.usda.gov/programs>.

Iowa Department of Agriculture and Land Stewardship's State Program pamphlet.

- ▶ Explaining state and joint state-federal programs
- ▶ Available at www.agriculture.state.ia.us/soil/pdf/IDALSDSC_ProgramSummary_Nov08.pdf.

²⁷ *Munier v. Zachary*, 114 N.W. 525, 527 (Iowa 1908).

²⁸ *Id.*

²⁹ IOWA CODE § 562.5A (2010).

³⁰ *Id.*

³¹ *Stamp v. Western Iowa Mut. Ins. Ass'n*, 739 N.W.2d 503, 503 (Iowa App. 2007).

Government Farm Programs

DCP and ACRE Payments

The type of lease agreement can impact the distribution of payments from the Direct and Counter-cyclical Program (DCP) and the Average Crop Revenue Election (ACRE) program. There has been some confusion regarding the sharing of program payments. In essence, a landlord cannot receive a share of the payments unless they are “actively engaged in farming,” which means their contribution to the operation must be significant and at risk.³² Therefore, a cash lease does not qualify a landlord for a share of DCP payments, while a crop share lease does.³³

The confusion has developed in regard to payment sharing under flexible, or adjustable, cash leases. Basically, for purposes of DCP payments, to constitute a share lease the amount of rent must be tied to the production or revenue of the specific farm. This means that if the landowner receives a cash amount based on the price at a specific market or a county yield average the lease is most likely a cash lease, and the landowner is not due any payment.

In addition, leases that establish a guaranteed amount of cash or a specified amount of the crop and are then adjusted by factors such as yield or price are considered cash rent leases. Similarly, leases that use bonuses for unexpectedly high yield or revenue are considered cash agreements.

Examples:

The *FSA Handbook* guiding the DCP and ACRE programs provides examples of farm leases and the outcome of their determination as cash or crop-share arrangements.

Example 1

In this example, the lease agreement specifies that the rent is based on a share of the gross revenue of the crop proceeds. The rental amount is equal to \$142.80 per acre based on the following variables:

- ▶ rent equal to 40 percent of the gross crop value
- ▶ guaranteed minimum yield of 170 bushels per acre
- ▶ actual price of \$2.10 per bushel.

While the landowner does not actually receive 40 percent of the crop produced, this lease shall be considered a cash lease because other rental amount is based on a guaranteed sum or minimum amount.

Example 2

In this example, the lease agreement specifies that there is a base, or minimum, cash rent amount that must be paid, but the landowner receives a share of the gross revenue in excess of the base value. The rental amount is based on the following variables:

- ▶ base, or minimum, cash rent is \$100 per acre
- ▶ additional rent is 50 percent of the gross revenue in excess of \$250 per acre
- ▶ yield of 52 bushels per acre
- ▶ price of \$6.50 per bushel.

³² 7 C.F.R. § 1400.201 (2010).

³³ 7 C.F.R. § 1412.54 (2010).

While the landowner does not actually receive 50 percent of the crop produced, this lease shall be considered a “combination” lease or cash lease because the lease agreement includes a guaranteed amount and an additional amount based on a share of the crop proceeds.

Example 3

In this example, the lease agreement specifies that the cash rent is based on a fixed number of bushels; however, the price is based on the value that will be set on a future date, but it is not based on the actual price received by the producer. The rental amount is based on the following variables:

- ▶ fixed number of bushels is 55 bushels per acre
- ▶ actual price is the price at the local elevator on December 1.

This lease shall be considered a cash lease.

In order to ensure the parties intentions regarding DCP and ACRE payments are fulfilled, it is recommended a written lease with the signatures of both parties indicate the nature of the lease and the desired division of payments. The parties should also visit their local FSA office with a copy of their lease and explain their intentions. The type of lease can have similar effects on payments from other programs, such as the Crop Disaster Program and Loan Deficiency Payments.

Conservation Programs

There are a wide variety of USDA and state programs designed to assist landowners in promoting conservation on their property. Whether on owner-operated land or leased farmland these programs should not be overlooked when establishing a sustainable farm operation. Assistance can come in the form of cost-sharing for conservation improvements, payments for providing environmental benefits, technical assistance, low-interest loans, rental payments, and purchases of conservation easements. The eligibility requirements and incentives available vary from program to program.

Conservation programs present a variety of considerations to be addressed when entering a farm lease. These considerations are particularly relevant when promoting sustainability in a farm lease situation due to the intrinsic nature of these programs. Important matters to consider include:

1. Who can enroll or participate? This question is easily answered for some conservation programs. For instance, a tenant can never enroll land in a permanent conservation easement, such as the Wetlands Reserve Program (WRP). The eligibility for enrollment in other programs depends on the type of program and the terms of the lease. If a program requires a contract for a period of years, the person enrolling in the program must be in control of the property for the entire term of the contract.³⁴ This means a tenant will only be eligible for enrollment if a long-term lease is entered or the landowner agrees to participate.

Lease provisions can give authority for enrollment to one party or the other as well as require landowner participation at the election of the tenant. Conservation programs that do not require such extended contracts may be available for participation by year to year tenants without participation by the landowner.

³⁴ See for example, 7 C.F.R. 1410.5 (2010)

2. Who is responsible for compliance? The responsibilities of each party relating to government programs can be set forth in the lease agreement. This can include refraining from certain practices on portions of the property or it can require specific acts.
3. How are payments distributed? The distribution of any payments from the program should also be addressed in the agreement. Some programs have requirements for the distribution of payments while others may be determined by agreement between the landlord and tenant. The tenant may have certain rights regarding program benefits even though the tenant might not have been farming the land at the time of enrollment.³⁵
4. Are there programs in place at the commencement of the lease? A farm lease should address any existing contracts affecting the use of the property. It is important the tenant understand the contract in order to ensure continued compliance. The lease should reflect both the positive and negative effects that existing farm programs might have on the tenant's operation. For instance, the tenant may be eligible for part of the payments for acres enrolled in certain programs, although the program might also create limitations on the tenant's farm practices.

Examples:Conservation Stewardship Program (CSP)

Purpose: Natural resource and energy conservation through financial and technical assistance in developing conservation systems and through payments for the environmental benefits of existing systems.

Enrollment: Tenants may enter into a CSP contract but must have control of the property for the entire term or participation by the landowner.

Contract Term: The minimum contract term for CSP is five years.

Environmental Quality Incentives Program (EQIP)

Purpose: Provide financial and technical assistance to aid producers in installing or implementing conservation practices.

Enrollment: Requires control of the property for the term of the contract and can be either a tenant or an owner.

Contract Term: Ranges from one year after the implementation of the last scheduled practice to a maximum term of ten years.

Incorporation of Laws and Regulations In the Lease Agreement

Lease agreements often incorporate specific laws in the contract. This is usually done to ensure the farm operation is in compliance with statutory and regulatory requirements and to protect the landowner from liability. These are important concerns and should be included. However, it is important to understand that the presence of these provisions do not by themselves ensure the sustainability of a farm operation. There are two significant reasons for concern. First, the legal requirements may not go far enough to effectively promote sustainability. Second, as mentioned previously, state laws vary, and a sample lease provision that is based on the law of one jurisdiction might not have the same effect in another.

Farm Program Compliance Laws

A common compliance provision requires that soil loss limits meet requirements of local, state, and federal law. It is important to understand that these requirements do not guarantee

³⁵ See for example, 7 C.F.R. 1410.56 (2010)

sustainable levels of soil loss. For instance, federal compliance laws relating to soil loss only apply to land classified as Highly Erodible (HEL).³⁶ This means federal soil loss limits might not apply to your land at all.

This however, does not mean there isn't a place for incorporating external requirements. For instance, including a conservation plan can be an effective tool to relay important information on how the farm is to be operated. As discussed in the previous section, conservation plans developed by NRCS staff are legally required for some land in order to be eligible for farm program payments.³⁷ However, plans may be developed for any farm operation and incorporated in the lease agreement. For more information on conservation plans see the discussion on Conservation Provisions in the "Key Considerations for a Sustainable Lease" chapter.

Local Soil Loss Limits

In addition, Soil and Water Conservation Districts (SWCD) in some states, such as Iowa, have regulations requiring farm operators to limit the soil loss to certain levels.³⁸ However, the mechanisms for enforcement as well as the will to enforce these rules is often limited. Again, while there are, perhaps, more effective means of protecting your land, such provisions do have a place in farm lease agreements. It may be beneficial to seek out your local SWCD commissioners, inquire about soil loss limits, and learn more about enforcing such limits on your property. In Iowa, complaints regarding soil loss limits can be brought by adversely affected neighbors or local officials.³⁹ Landowners are not included in the language of the statute.



Conservation Districts were formed in response to the Dustbowl catastrophe of the 1920s and 1930s. Photo by USDA NRCS.

Environmental Regulations

In addition, many environmental regulations do not apply to agriculture or only require voluntary participation.⁴⁰ Again, the inclusion of provisions requiring compliance with these laws does have an important role to play in protecting the landowner from liability, but may not necessarily meet the landowner's expectations regarding environmental protections. It is, therefore, important to pay particular attention to the Conservation Provision section of the next chapter if there are specific sustainability issues you wish to address. It should also be noted that tenant's have an interest in limiting their liability for violations existing prior to the lease agreement.

³⁶ 16 U.S.C. § 3811(a) (2010).

³⁷ 16 U.S.C. § 3812(a) (2010).

³⁸ IOWA CODE § 161A.43 (2010).

³⁹ IOWA CODE § 161A.61 (2010).

⁴⁰ 33 U.S.C. § 1362(14) (2010).



Photo by USDA NRCS

Chapter Five: Key Considerations

For a Sustainable Farm Lease Agreement

The Keys

- Tenure Security
- Reimbursement for Improvements
- Cost-Sharing
- Risk-Sharing
- Communication
- Conservation Provisions

The first five considerations examined here are all meant to encourage and enable your tenant to adopt sustainable practices. This approach not only motivates your tenant to protect the farm's resources but also aids in establishing a long and cooperative relationship between you and your tenant. The final section looks at mandatory conservation provisions.

Tenure Security

The term, or duration, of the lease agreement is perhaps the most critical matter in encouraging the adoption of sustainable practices. The notion that a renter has little reason to care for the long-term use of property is as old as the landlord-tenant relationship itself.

Advantages of a Lease for Years

Short-term year-to-year leases have become the norm in Iowa as well as many other parts of the country. However, this is despite the many advantages that are offered in a long-term lease.

Historical Perspectives on Tenure Security:

"[H]e must be too improvident a man to be a good farmer, who should invest in the land capital sufficient for high cultivation, without some security that a change in the ownership of the estate . . . may not at any moment bring a notice to give up farm, improvements, and capital, and leave it all, uncompensated, to a stranger." — George Wingrove Cooke, Attorney, 1850.

"The tenant who expects to remain but a short time on a farm has little incentive to conserve and improve the soil; he has equally little incentive to maintain and improve the wood lot, the house, barn, shed, or other structures on the farm." — Report of the President's Committee on Farm Tenancy, February 1937.

"I'm not going to want to put in hundreds of hours of sweat-equity into soil that I may not have next year. Why should I as a tenant build up the soil fertility of land that is not even mine just so he can rent it to someone else for more than I am paying and so that person can benefit by having richer dirt? I don't think any rational person would be foolish enough to really build-up dirt that's not even his." — Iowa farm tenant, 2001. (Michael Carolan, *Barriers to the Adoption of Sustainable Agriculture on Rented Land*, 70 RURAL SOCIOLOGY 387 (2005)).

Improved Tenure Security

A lease of several years provides tenure security for the tenant, encouraging the adoption of long-term conservation practices that decrease soil erosion, build soil nutrients, and maintain farm structures. A longer tenure can also increase the farm operator's connection to neighbors and the surrounding community. This aspect can encourage sustainable practices affecting off-farm environmental factors such as water quality and decreasing runoff from rainfall, as well as creating greater concern for the social and economic well-being of the community.

Reduced Transaction Costs

In considering the length of the lease term consideration should also be given to transaction costs and social capital, or good-will. A year to year cash lease requires renegotiation each year and possibly providing a yearly notice to terminate. This not only costs time and money but can also decrease the trust and good-will between the parties. A lease for a term of years on the other hand, while requiring more initial effort and planning, can provide built-in adjustments for rent, eliminating the need for termination and renegotiation. It also creates longer term relationships, which encourages trust and ease of communication.

Sample Provision:

Automatic Extension Without Notice to Terminate: This lease shall continue after expiration of the initial lease period as a periodic lease for the same period of years as the original term and upon the same terms and conditions as the original lease, unless either party gives proper notice of termination or the parties sign a renewal of this lease one (1) year or more prior to the expiration of the initial lease term or any extension or renewal thereof. Proper notice of termination is written notice served in a manner prescribed by state law one (1) year or more prior to the expiration of this lease term or any extension or renewal thereof.

Option for Indexing Extensions: The annual cash rent of any extension or renewal, unless otherwise agreed in writing, shall be the fixed rent identified for the original term but adjusted according to the index set forth in the Fixed Cash Rent with Option for Indexing provision below.

Explanation:

These provisions are, admittedly, more complex than those typically found in form agricultural leases. However, sorting through and understanding the initial complexity can pay off down the road.

For instance, the second provision references an index that can be used to adjust the rent each year based upon agreed upon factors, such as commodity prices, yields, or simply the consumer price index. Such an index requires a little extra planning, but is commonly found as an option in Extension and state bar association form leases.

The index allows the parties to enter the long-term lease arrangements addressed in the first provision, provided, of course, that the initial lease term is for a term of three years or more. The one year notice period and extension for a term of years provides the tenant with the needed security to engage in long-term planning and invest in the sustainability of the farm. Further, the clause specifically mentions renewals in order to encourage the parties to recognize and address changes in circumstances early and in writing.

Disadvantages of a Lease for Years

There are also possible disadvantages to the adoption of a long-term lease. However, these possible disadvantages are not without possible solutions.

Effect on Renegotiating the Rent and Other Terms

One of the primary reasons landowners avoid the use of a long-term lease is to allow for renegotiation of the lease terms each year, especially the rent. This makes sense as the factors used to calculate farm rent, such as commodity prices, land values, and the price of farm inputs, are subject to change each year. Renegotiating the rent closer to the crop year allows the rent to be adjusted to more accurately reflect the land's value.

Possible Solutions:

- ▶ A *rent adjustment index* can be used to base each year's rent on a formula that accounts for a variety of factors including commodity prices, land values, and the cost of farm inputs. Such an index should specify the particular market and time to be used and should be written in the lease agreement.
- ▶ *Crop-share arrangements* and *flexible cash leases* can also be used to ensure the rent matches the production and revenue from the farm operation. More information on these arrangements is included in the section on risk-sharing below.
- ▶ Conservation and nutrient management plans allow for periodic changes in farm practices during the lease term. The provision incorporating the plan can require periodic review and adjustment in cooperation with a third party, such as NRCS staff. This allows you and your tenant to adjust practices to match changes in circumstances and technology.

Effect on the Market Value of the Property

Another reason landowners hesitate to enter a long-term lease is the encumbrance to the sale of the property created by a lease. The landowner is still allowed to sell the land, but the sale will likely be subject to the provisions of the lease. This means the new owner must honor the terms of the lease agreement. This can result in a lower sale price, or the landowner must negotiate an early termination with the tenant.

Possible Solutions:

- ▶ Negotiate an early termination.
- ▶ Include an early termination provision. This, however, still limits the tenant's tenure security, resulting in decreased motivation for long-term conservation. This makes the inclusion of a provision regarding reimbursements for unused portions of improvements particularly important. Such provisions are discussed in the next section.
- ▶ Grant your tenant the right of first refusal if you should decide to sell the property. This at least offers the tenant a chance to continue farming the property as an owner-operator.

Entering a Lease with an Untested Tenant

Landowners also have legitimate fears about establishing a long term commitment with an untested tenant. After all, like everyone else, not all tenants have the same values or the same knowledge, skill, and equipment. While providing secure land tenure is important for the promotion of sustainable practices, it does not benefit you or the land to have a tenant that does not live up to the agreement.

Possible Solutions:

- ▶ Include specific clauses addressing the manner in which the tenant will farm. Again, conservation provisions are discussed below. Such clauses can require specific practices and establish a standard of stewardship that the tenant must meet.
- ▶ Include a provision for termination upon default. Such a clause can help prevent continued harm to your farm. However, you may want to consider a clause in this provision that allows the tenant a timeframe in which to remedy any breaches. This encourages tenure security and enduring landlord-tenant relationships.
- ▶ Another method to help ensure rental payment is to require the rent be paid at the beginning of the lease year. This can, however, be particularly difficult for new farmers or if additional investments are needed in order to adopt sustainable practices.
- ▶ Another way to help avoid such a situation altogether, is to check the operator's resume or ask for references. An established farm operator will probably have other landlords that can provide background information on the potential tenant, and professional resumes are becoming more common. When dealing with new farmers that do not have an extensive history of landlords you should consider asking to see their business plan or for other personal references.

Long-term Ground Leases

If you are willing to consider a lease for more than ten years it is worth reading about ground leases. These are more commonly used in commercial leases, but are also used by municipalities and community land trusts on agricultural land. A ground lease is a long-term lease of land, usually for 99 years, where the tenant owns the buildings and improvements. At the end of the lease term the tenant is to surrender the land and the buildings, or renew the lease. While not practical for most landowners, it is a useful mechanism for those seeking to ensure continued agricultural production on the property. Conservation easements are often placed on the property at the same time. Any parties wishing to adopt such a lease should seek the counsel of a legal professional before proceeding.

If a Long-term Lease Will Not Work for You

For one reason or another a long-term lease might not work for you. In such a case you should pay particular attention to other lease mechanisms that can encourage sustainable practices by your tenant. It is also important to recognize that, while a longer term is perhaps the most significant factor to encouraging conservation practices, it does not guarantee adoption, particularly in relation to practices affecting off-farm sustainability. For these reasons, it is necessary to look at other options to encourage sustainable farm practices.

Reimbursement for Improvements

Providing reimbursement for the unused portion of a tenant's investment in the land can increase a tenant's motivation to invest in the land even in the absence of a long-term lease. A tenant is unlikely to invest in improvements that will not show a return before the lease terminates, but a provision requiring reimbursement for approved improvements can change this.

In attempting to promote the sustainability of the soil, as well as other aspects of the farm, it is important to recognize not only structural improvements but also the benefits accrued through sustainable practices. Consideration should be given to providing credit for a tenant's expenses

regarding crop rotations and green manure crops that add nutrients to the soil after the lease terminates.

In considering reimbursement for improvements, it is important you discuss and put in writing what improvements are needed, the costs of needed improvements, and expenses to be contributed by each party. A lease supplement ensuring contributions to, and reimbursements for, conservation improvements is provided by Iowa State University Extension.

Cost-sharing

Sharing the costs of the farm operation can encourage the tenant to try sustainable practices. Typically, the parties share more of the expenses in crop-share leases than in cash rent leases. However, the parties are free to agree to cost-sharing arrangements in a cash rent lease as well. This can be particularly useful where specialized equipment, additional labor, or certification must be obtained. There are a couple of different ways in which you can share the costs of sustainable production with your tenant. These include sharing in the necessary inputs to further the farm's sustainability and simply reducing the amount of rent the tenant owes in order to encourage sustainable practices and improvements.

Sharing Contributions

This option can be especially useful where the tenant lacks the capital needed to invest in the desired conservation practices. However, it may require additional time and effort in calculating each party's contribution. This is especially relevant in a crop-share agreement where the parties deviate from typical cost-sharing arrangements to promote sustainable farming. Iowa State University Extension provides more in-depth information on "Adapting Crop Share Agreements for Sustainable and Organic Agriculture."

There are a variety of expenses the parties might consider sharing. These range from typical farm inputs, such as seed and fertilizer, to specialized equipment needed for sustainable farm practices. In addition to monetary costs, you might consider contributing to the time required to improve the sustainability of the farm.

Reducing Rent

If you don't want to alter the typical contributions of each party, another option is to simply reduce the rent in order to promote sustainable practices. This can be done in a couple of ways.

An Example: Integrating Livestock

Integrating livestock into a farm operation can improve the operation's efficiency and sustainability. In addition, many landowners and farmers simply see livestock as an intrinsic part of farming. However, there may be additional expenses for an operation that has not previously involved livestock.

Monetary Costs:

- ▶ Fencing
- ▶ Infrastructure for cutting and curing silage
- ▶ Winter feed
- ▶ Veterinary Expenses

Time Costs:

- ▶ Management of rotational grazing
- ▶ Management of artificial insemination and choosing a male
- ▶ Marketing

Other issues to address in the lease:

- ▶ Liability
- ▶ Insurance
- ▶ Livestock access to water resources

First, you can use a graduated rent. If your tenant is worried about an initial decrease in yield, a graduated rent will allow for a lower initial rental amount that will gradually increase in the years after sustainable practices are adopted. As discussed in the final chapter of this guide, this

type of provision can also be useful in assisting a beginning farmer by slowly bringing the farmer up to full payments.

Another option is to simply reduce the rent by a specific amount in the first year to account for the tenant's cost in improving the land. The following provision is derived from the Sample Multi-year Lease Agreement by the New England non-profit group, Land for Good.

Sample Graduated Rent Provision:

The total rental amount for the first year shall be reduced by 20%. This reduction shall be applied to the total for each subsequent year, but the reduction shall be decreased by 5% each year until the full rental amount is being paid.

Sample Rent Reduction Provision:

Landlord recognizes that Tenant may incur start-up costs at the beginning of the Lease term related to improving the agricultural soils on the Premises or making other improvements to the Premises. Toward that end, the first annual Lease fee, due on _____, will be reduced by \$_____.

Yet another way to share the costs of building up the soil and improving the resources of the farm is to reduce the rent to encourage specific practices. It should be noted in this last example

Sample Rent Adjustment Provision:

The rent for cropland acres planted in hay shall be reduced by 20%.

that this will require the division of rental rates based on the type of land use. For instance, the lease could set the rental rate for cropland at \$_____ per acre, pasture at \$_____ per acre, and so forth.

Risk-sharing

Farming can be a risky business, and the more a farmer can reduce the amount of risk they face the more willing they may be try alternative farming practices. The primary way you can help reduce the risk faced by your tenant is adjusting the rent based on the amount of yield produced on the farm, the price received for the farm product, or both. Crop-share and flexible cash leases, described at the end of "Chapter One: The Basics," both provide ways to do this.

A crop-share lease is a traditional method of distributing the risk between the tenant and landowner. Because the rent is simply a portion of the crop produced on the property, which the landowner then must sell on the market (or have the tenant sell, depending on specific lease provisions), the landowner assumes a portion of the risk for both the farm's yield and the price received for that yield. This means if the tenant has a poor yield or prices are low, they don't pay as much rent.

There are, however, additional considerations that must be taken into account when entering a crop-share lease. Typically, landowners contribute a share of the farm inputs and are more involved in land use decision-making. This added involvement and risk can affect social security payments, taxes, estate planning, and the distribution of farm program payments. As discussed in "Chapter Four: Farm Leases, Sustainability, and the Law," you will be more likely to be viewed as self-employed and more likely to be eligible for a share of any farm program payments.

Flexible or adjustable cash leases provide rent based on the crop yield, the crop price, or a combination of these attributes. The risk in these arrangements can be based on the actual yield and revenue received from the farm or it can be based on a county yield average and the price of

a predetermined market at a set time. If the tenant perceives added risk stemming from the adoption of sustainable practices, you will most likely want to ensure that the rent is based on the actual farm yield in order to reflect the tenant's increased risk. However, this can also impact the division of farm program payments between you and your tenant. If the rent is adjusted based on factors on the farm then the payments are divided. Again, more information on this topic can be found in Chapter Four.

Conservation Provisions

In addition, to developing a lease which encourages sustainable practices, landowners may wish to establish specific requirements or limitations in relation to areas of particular concern. Provisions directly mandating specific conservation practices can be useful, though it is necessary to take practical considerations into account before developing such a lease. For instance, certain practices may require special skills, additional labor, or specialized equipment. This may require additional discussions with the tenant and modifications to the lease terms in order to ensure an equitable and sustainable lease.

Good Husbandry Provisions

As discussed in Chapter Four, the covenant of good husbandry implied into farm leases by the law provides a community standard by which a tenant's practices are measured. Similar provisions, using phrases such as "good and farmer-like manner" and "farm faithfully and in a timely, thorough, and businesslike manner," are often included in farm leases and have correspondingly similar standards.

Just as with the good husbandry covenant, such provisions provide a degree of protection for a farm's resources. However, as previously mentioned this protection likely only extends as far as community practices. This may be inadequate to protect the sustainability of your farm.

There are ways such a provision can help ensure a more sustainable operation. First, you can expressly establish a higher standard. Second, consider stating the purpose of the standard as relating to the conservation of the land's resources and the long-term productivity of the farm. However, it is also important to recognize that different interpretations may exist regarding such standards, and the complementary use of specific provisions or plans are needed to clarify restricted and required practices.

Sample Good Husbandry Provision:

The tenant will farm in accord with the highest standards of good husbandry and will take all first-class farmer-like steps to ensure the conservation of the natural resources and the long-term productivity of the farm.

Conservation Plans

One method for including conservation practices in a lease is to incorporate a conservation plan. As discussed in "Chapter Four: Farm Leases, Sustainability, and the Law," conservation plans are sometimes required for participation in certain farm programs. It is important to note, however, that NRCS staff are available to assist other landowners wishing to develop a plan. These plans can be used to address a number of conservation concerns, including soil erosion, nutrient depletion, pollution from runoff, and water use and control. There is no set plan that works for every piece of land, but rather a conservation plan should be based on the circumstances of the land and the farm operation. It can best be utilized when developed in consultation with NRCS staff and the input of both landowner and tenant.

Similar tools that are worth consideration are Nutrient Management Plans and Pest Management Plans. It is important for any farm operation to address nutrient management in order to prevent pollution from runoff, as well as conserve farm resources. However, this is particularly important, and may be required, for operations involving livestock. NRCS will provide assistance in developing plans that can be incorporated into a lease.

Land Use Provisions

As discussed in "Chapter Four, Farm Leases, Sustainability, and the Law," tenants are granted the right to use the land for agricultural purposes, and perhaps other purposes, as they see fit, unless the landowner places reservations on that right. You may want to consider doing this in relation to how certain pieces of land can be used, particularly if you don't have a conservation plan addressing land use. Land use provisions can be used to specify the fields that are available for cultivation, the crops that can be planted on cultivated fields, the maximum number of acres planted to a specific crop, or the crop rotations the tenant is expected to follow.

For example, a table such as the one below could be included in a long-term lease to establish specific crop rotations. The use of such a provision is not common, and it could also be addressed in a conservation plan. The completion of such a provision needs to be done in close cooperation with the tenant.

Field:						
Year 1						
Year 2						
Year 3						
Year 4						
Year 5						

Establishing Thresholds and Monitoring

Rather than mandate specific practices, conservation provisions can simply require certain thresholds be maintained or conservation objectives achieved. Such thresholds could include the testing and maintenance of crop nutrient levels or limiting soil loss to a designated amount. These provisions need to set forth not only the acceptable levels, but also the methods used for monitoring and remedial measures if the thresholds are not maintained or achieved.

This helps ensure the landowner's concerns are addressed while providing flexibility to the tenant. It is, however, important that a lease ensure the methods used to meet the objectives do not harm the sustainability of the operation in other aspects. For example, requiring the testing and maintenance of nutrient levels in the soil might be supplemented by provisions limiting the manner in which nutrients are applied to achieve the desired levels.

Examples of Specific Conservation Provisions

The inclusion of provisions relating to specific practices can also be useful, particularly where the landowner has special concerns. Some of the issues might also be addressed in a conservation plan, discussed above, or in land use provisions that establish specific crop rotations or limit the amount of acreage for row crop production.

The provisions below are examples of those typically found in agricultural form leases. As can be seen these provisions often provide general guidelines and rely heavily on compliance with conservation laws and environmental regulations. These do play an important role in protecting the land from degradation, as well as the landowner from liability. However, as stated in the previous chapter, a reliance on incorporating conservation laws and regulations may not go far enough in ensuring the sustainability of the property.

In addition, some provisions, such as those regarding a neat and orderly appearance and controlling weeds, may result in unnecessary herbicide application, destruction of wildlife habitat, or other non-sustainable practices in order to present a facade of a well-functioning farm.

Additional Resources:

Your NRCS Service Center and University Extension Office.

- ▶ Both provide information on the benefits of specific practices, how to implement them, and possible sources of financial and technical assistance

The Leopold Center for Sustainable Agriculture

- ▶ Resources on a variety of conservation farming methods that may work on your land.
- ▶ Found at <http://www.leopold.iastate.edu>.

Iowa NRCS

- ▶ Providing information on specific conservation practices as well as government cost-sharing programs.
- ▶ Available at <http://www.ia.nrcs.usda.gov/news/brochures/publications.html>.

Typical Conservation Provisions:

- ▶ To keep the lease premises neat and orderly.
- ▶ To prevent noxious weeds from going to seed on said premises and to destroy the same and keep the weeds and grass cut.
- ▶ To prevent all unnecessary waste, loss, and/or damage to the property of the landlord.
- ▶ To keep the buildings, fences, and other improvements in good repair and condition as they are when the Tenant takes possession or in as good repair and condition as they may be put by the Landlord during the term of the lease - ordinary wear, loss by fire, or unavoidable destruction excepted.
- ▶ To comply with pollution control and environmental protection requirements as required by local, state, and federal agencies.
- ▶ To implement water conservation and soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies.
- ▶ To generally follow Natural Resource Conservation Service and Farm Service Agency recommendations and to maintain all other requirements necessary to qualify current and future farm operators to participate in federal farm programs.
- ▶ To haul and spread manure on appropriate fields at times and in quantities consistent with environmental protection requirements.
- ▶ To take proper care of all trees, vines, and shrubs, and to prevent injury to the same.
- ▶ Not to plow permanent pasture or meadowland.
- ▶ Not to remove cornstalks, straw, or other crop residues grown upon the farm.

The provisions that follow provide additional, and perhaps alternative, options. While they do sometimes rely on government standards and regulations, they also provide more specifics regarding certain practices. It is important to reiterate that the use of these provisions does not necessarily ensure sustainability, there are additional conservation concerns that can be addressed, and some of the provisions will not apply to all farm operations. Rather, the use of specific conservation provisions depend on the landowner's values and concerns, as well as the abilities and constraints of the tenant.

Sample Conservation Provisions

Conservation in General:

- ▶ The Tenant will keep the lease premises neat and orderly. The Landlord and Tenant recognize the possibility of weeds as the result of certain practices that promote the conservation and long-term productivity of the lease premises and will take this into account regarding the appearance of the farm.
- ▶ The Tenant will leave a vegetative buffer _____ feet from any watercourse, stream, or river.
- ▶ Waterways removed by plowing, use of chemicals or other means shall be replaced at the tenant's expense.
- ▶ Tenant agrees to implement a haying/ grazing plan approved by NRCS or landowner.

Soil Conservation:

- ▶ Tenant shall clip waterways as necessary for maintenance of soil conservation practices.
- ▶ The Tenant will employ contour farming.
- ▶ The Tenant will employ strip cropping.
- ▶ No-till shall be used on designated fields.
- ▶ A cover crop shall be seeded on corn ground harvested for silage.
- ▶ Corn and soybean fields shall have sufficient ground cover at planting time to control erosion within soil loss limits set under the conservation plan.
- ▶ Erosion shall be controlled in farm pond watersheds.

Crop Residue:

- ▶ The Tenant will not burn or remove any crop residue, including but not limited to cornstalks, corncobs, leaves, straw, stubble, and stover, without the written consent of the Landlord.
- ▶ If any fieldwork is done in the fall, at least two-thirds of the soil will be left covered with crop residue.

Nutrient Management:

- ▶ The Tenant will haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. At no time shall manure be spread on frozen ground or between the dates of _____ and _____.
- ▶ A cover crop shall be seeded on corn ground harvested for silage.
- ▶ No fall tillage should occur on soybean ground.

- ▶ Crop rotation shall be followed as selected by the landlord on designated field(s).
- ▶ Tenant agrees to test soil for residual nitrogen and phosphorus.
- ▶ Tenant will figure credits for manure and previous legume crops before applying additional nutrients.

Pest Management:

- ▶ The Tenant will use mechanical and non-chemical means of control as the primary methods of controlling weeds on crop ground.
- ▶ Tenant agrees to minimize use of herbicides by employing integrated weed strategies as the primary means of weed control.
- ▶ Tenant agrees to minimize use of insecticides by employing pest management strategies as primary means of pest control.
- ▶ The Tenant will mow road ditches and field edges in accordance with local, state, and federal law and will not mow ditches, field edges, grass waterways, set-aside acres, and other areas of vegetation until after the nesting period for game birds and songbirds has passed.

Livestock:

- ▶ The Tenant shall not establish or maintain any commercial feedlot, which is defined for the purposes of this Lease as a confined area or facility within which the land is not grazed or cropped at least annually, and which is used primarily to receive and hold livestock that has been raised off the Premises.
- ▶ The Tenant shall not allow livestock access to surface water, including rivers, streams, lakes, and ponds, other than those constructed for the purpose of livestock watering.
- ▶ Tenant agrees to implement a haying/ grazing plan approved by NRCS or landowner.

Genetically Modified Organisms (GMO) or Bioengineered Crops

- ▶ The Tenant will not plant genetically modified crops on any of the lease premises.

Communication

Increased communication has been shown to increase a tenant's confidence in their landlord's commitment to the continuation of the lease arrangement. Communications with your tenant can be done informally or can be required through formal reports and monitoring in the lease agreement. Using both ways will probably be beneficial.

Informal communications can occur through letters at holidays or other special occasions. These are by no means necessary, but it can help establish a confident, long-term relationship.

Communication can be required in the lease agreement as well. Such communications can be annual or semi-annual reports on farm operations. For instance, a provision might require your tenant to send you a report explaining the year's crop plan - detailing how many and which acres will be planted to different crops. Provisions can also require monitoring of soil nutrients or soil loss with subsequent reports.

If you are unable to personally review and provide feedback to your tenant you might consider establishing an agent that will communicate with the tenant for you. This can provide a set of local eyes and ears if you're not able to monitor the farm operations yourself.



Assisting a New Farmer

Helping a beginning farmer can improve sustainability in a number of ways. It can be used to pass the art of farming to a new generation, it helps the rural social structure and economy, it can potentially result in a more flexible tenant willing to provide customized stewardship for the land, and it can provide economic returns through diverse markets and government programs.

How to Assist a New Farmer

First, you can actively seek out a beginning farmer as a tenant. This could be a neighbor's child or someone else you know looking for land. Or, you can use one of the many networks available to find a new farmer looking for land.

There are also many tools that can be used in a lease arrangement to assist a new farmer. One of the biggest dilemmas facing a new farmer is gaining the capital to start farming. Leasing can provide a way to gain access to land, learn valuable lessons about running a farming operation, and perhaps even save the needed capital to become a landowner.

Additional Resources:

- ▶ The Beginning Farmer Center at Iowa State University (www.extension.iastate.edu/bfc/)
- ▶ The Land Stewardship Project's Farm Beginnings (www.landstewardshipproject.org/programs_farmbeginnings.html)
- ▶ Practical Farmers of Iowa (www.practicalfarmers.org/programs/youth-and-next-generation.html)

Secure Tenure

Providing secure tenure is a key consideration for promoting sustainability in any farm lease arrangement. However, when leasing to a new farmer, this element takes on additional importance. Unlike an established farmer that may own land as well as rent from other landowners, a new farmer may be dependent on access to your leased farmland. Therefore, secure tenure is crucial to their ability to access capital and purchase needed equipment and supplies.

Under certain circumstances you might also consider providing an option to purchase or right of first refusal in the lease agreement. This can provide an additional layer of tenure security. If

you do decide to address these issues it is especially important to include an accurate legal description of the property in lease agreement.

Reduced Rent

Reducing the rent, at least initially, is an obvious way to help a new farmer that lacks capital. A graduated rent begins with a first year reduction in the rent that is gradually eliminated. For instance, the rent might be reduced by twenty percent the first year, then fifteen percent the second year, and so forth until your tenant is paying the full rent in the fifth year.

Share Expenses and Equipment

Other cost-sharing tools can also provide valuable help to a new farmer. This can take the form of sharing some of the expenses related to production or perhaps sharing equipment you might own. As discussed in Chapter Four of “The Landowner’s Guide,” sharing in expenses, particularly in a crop-share arrangement, may have additional tax and social security repercussions.

Mentoring a New Farmer

If you are a farmer yourself or retired from farming you might also consider mentoring a new farm tenant. This provides access to land as well as a wealth of valuable information. If you do take part in the management of the farm you will want to be certain to establish your intent to enter a landlord-tenant relationship rather than a partnership or some other legal relationship. Again, you will want to also pay attention, particularly in a crop-share arrangement, to tax and social security issues.

Consider Leasing a Small Portion of Your Farm

Some new farmers may be looking to only rent a few acres to establish a small diversified operation. This can allow you to assist a new farmer while renting the remainder of your land to

Additional Resources:

Beginning Farm Tax Credit Summary

- ▶ Provides information on benefits and eligibility for the Iowa Beginning Farmer Tax Credit Program.
- ▶ Located at <http://www.iada.state.ia.us/images/word/BFTCProgramSummary.doc>.

Transition Incentives Program Fact Sheet

- ▶ Provides more information on the CRP TIP program.
- ▶ Available at http://www.apfo.usda.gov/Internet/FSA_File/tipfactsheet.pdf.

Transition Incentives Program Network

- ▶ An online tool for connecting new and socially disadvantaged farmers with landowners.
- ▶ Found at <http://www.fsa.usda.gov/FSA/webapp?area=online&subject=landing&topic=tip>.

Drake Agricultural Law Center’s Beginning Farmer page

- ▶ Includes resources from The Drake Forum on America’s New Farmers: Policy Innovations and Opportunities
- ▶ Available at <http://www.law.drake.edu/centers/agLaw/?pageID=beginningFarmers>.

another farmer. This situation benefits new farmers, the land, the local economy, and diversifies your farm income.

Assistance Programs

There can also be additional financial benefits for you. Many states offer tax incentives for landowners that rent to beginning farmers. The Iowa Beginning Farmer Tax Credit Program is one such opportunity. For more information on benefits and eligibility for this program review the Beginning Farm Tax Credit Summary.

There is also a federal program for retiring landowners with CRP land. The Transition Incentives Program (TIP) allows retiring farmers to receive two years of additional CRP payments for renting or selling farmland to a beginning or socially disadvantaged farmer for a term of five years or more. The landowner must allow the tenant to adopt sustainable practices, including but not limited to organic production. As part of TIP, FSA has developed the TIP NET to put new and socially disadvantaged farmers in touch with landowners.

Recreation

There are a variety of opportunities in relation to recreational uses, such as hunting and fishing, on agricultural land. The land can be enjoyed for personal use by you as the landowner, the tenant, or both. You or the tenant can also rent the land to third parties for recreational uses. Opening the land to the public can provide financial benefits under certain state programs and it also improves the quality of life for the surrounding community. Opportunities that allow your tenant to use or to make money from allowing others to use the land for recreation increases their motivation to maintain and restore wildlife habitat. Like many other issues, these opportunities present additional considerations when dealing with leased farmland.

Additional Resources:

The National Agricultural Law Center's States' Recreational Use Statutes

- ▶ A database of state recreational use statutes.
- ▶ www.nationalaglawcenter.org/assets/recreationaluse/index.html

The Right to Recreate on Leased Land

As discussed in the section on the tenant's right to possession, the parties should provide a written provision addressing the rights of the parties in relation to recreation opportunities. Courts have held that an agricultural lease does grant the tenant the right to use the property for hunting and fishing, as well as to lease the property to others for such purposes. Therefore, if you wish to reserve any recreational rights for yourself or to limit your tenant's rights in this regard you should specifically state the limitations in the lease.

Liability on Leased Land

Liability is also an important consideration. If the tenant retains the right to lease the property for hunting or fishing you will want to ensure the tenant is willing to indemnify you against any claims by third parties. This, of course, should also be considered if you are the one leasing the premises for third party activities. Consideration should also be given to requiring insurance to be carried by the party responsible for permitting others to use the property. It is worth noting that some state public access laws relieve landowners and tenants of some liability in relation to public access on the property. State laws should be checked for the extent of liability relief and limitations. For instance, some state laws only cover land for which no charge is required to gain access.

Preventing Interference with Agricultural Uses

If you're interested in reserving the right to lease the land yourself, you should consider including provisions that protect your tenant's agricultural interests in the land. Such provisions might include ensuring that hunting activities will not take place during certain farm operations or requiring that advance notice will be given before anyone enters the property for recreational purposes.

Land Use Regulations

Attention should also be given to zoning requirements and other land use regulations if the recreational use involves agritourism. Many states have adopted right to farm laws that exempt agriculture from zoning requirements. However, recreational activities can undermine a determination of a business as an agricultural endeavor, thus subjecting the enterprise to certain land use requirements.

Agricultural and Conservation Easements

If you wish to continue leasing your farmland for agricultural production, but are interested in entering an agricultural or conservation easement, there are additional issues to deal with in developing your lease agreement. This is especially true if you are willing to grant a long lease-term to your tenant farmer.

Additional Resources:

For more information on conservation easements visit the Iowa Natural Heritage Foundation (INHF) or a land trust near you.

- ▶ INHF provides a landowner's guide to land protection, "Landowner Options: Safeguarding Iowa's Natural Resources for the Future." It is available online or in print for no charge.
- ▶ Available at <http://www.inhf.org/publications/landowner/get-book.htm>.

It is possible to grant an easement while a farm lease still exists. This will either take negotiating new lease terms with the tenant before you enter the easement or reserving your right to grant an easement in the original lease agreement.

A provision that allows you to enter an easement should require that the easement will not unduly restrict the tenant's agricultural activities under the lease agreement. Without a clause to this effect, the stability of the tenant's tenure will be decreased, and as discussed in the previous chapter, this can have adverse effects on your tenant's motivation to conserve farm resources.

It is also important that the tenant understand the terms and conditions of the easement and is willing to comply with those terms and conditions. To this end, you might consider allowing the tenant to meet with you prior to any adoption of an agricultural or conservation easement. Such a meeting would facilitate a further understanding of the terms and conditions and a chance for the tenant to express any concerns about how the easement will effect their agricultural operations. After all, it is better to address these concerns prior to entering the agreement when terms and conditions might be adjusted than waiting until disagreements result in litigation.

If the tenant is not willing to agree to a provision that allows you to grant an easement that is not subject to the lease, you could offer to give the tenant the ability to reject the proposed easement. Such a provision might require you to give notice to the tenant of your proposed easement and give them a certain amount of time to object.

Ecosystem Services

Ecosystem Services refers to a market based approach to providing environmental benefits. Voluntary markets have been established for improving water quality and biodiversity. There have also been recent efforts to establish markets for carbon sequestration. Basically, you can get paid to provide environmental benefits that offset harmful practices elsewhere. It should be noted that these services are in the early stages of development and agriculture's role in this new marketplace is yet to be determined.

These markets can provide a unique way to improve the sustainability of the property while benefiting financially. However, in relation to leased farmland there are some important matters to consider.

First, it is important to address who has the authority to participate in ecosystem markets. Many of the contracts for ecosystem services require specific land uses and practices for many years. Therefore, it is important that the tenant understands they cannot enter a contract that places certain restrictions on the property beyond the duration of the lease agreement without your participation. However, you may wish to encourage the tenant to seek out such opportunities. To do this you could give your tenant the ability to enter any such contracts after they provide you notice and the opportunity to decline. This may require a provision stating that you will sign required documents to establish ecoservice payments.

Second, it is important that both parties understand their rights and duties in relation to the new ecosystem contract. Many of the contracts require pulling land out of agricultural production, creating wildlife habitat, or specific farming practices such as using no-till farming. It is important to understand who will provide additional labor and pay for the expenses incurred.

Finally, you will also want to address the division of payments for the ecosystem services. Consideration should be given to the contributions of each party, as well as, perhaps, benefits that you will receive beyond the term of the lease.

It is also worth noting here that you can enter ecosystem services contracts and receive payments for land already entered into some government conservation programs, such as the Wetlands Reserve Program (WRP). You should make sure that any ecosystem services contract requirements do not violate the terms of the easement contract.