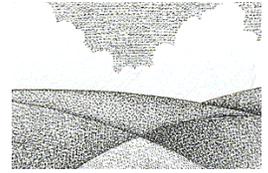


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A Lease Agreements Guide for Landowners and Farmers

Do you have some land you want farmed? Or are you a farmer looking for some extra acreage? If so, you may be joining the ranks of the many landowners and farmers in Vermont who, by working together, help keep the state's "working landscape" open and productive.

If you are planning to work with a farmer or landowner, there are several issues to consider before you enter into an agreement to create a successful working relationship with your neighbor. The purpose of this fact sheet is to provide you with some of the basics involved with putting together an effective farmland lease agreement with which you and your neighbor are happy.

Step One

The first step in putting together an effective agreement is taking stock. Take a look at what you have to offer and your goals for the property.

For landowners, determining the amount and quality of land you have available is an obvious place to start. Keep in mind that not all land is created equal, particularly in New England. Land is quite variable and very few parcels of land are perfectly shaped in a square or rectangle. Land usually slopes in one or more directions. It can be rolling. In many cases, you cannot see the whole parcel from all points unless you are in an airplane. The point is knowing exactly how much land with which you're dealing.

Poor land, small parcels, or land with poor accessibility and/or obstructions may not even be worth considering, as these parcels may be too difficult to farm. However, if the land is fertile, accessible, and of a decent size, you may find farmers interested in using your land.

For farmers, take a look at what you have to offer, too. What type of farming do you do and what will you use the land for? Be prepared to answer basic farming questions. Landowners may be extremely inquisitive about your farming practices simply because they may not be familiar with agriculture. Remember, a little education will go a long way in creating a satisfying, long-term relationship with a supportive landowner.

By working together, farmers and cooperative neighbors help keep the state's "working landscape" open and productive.

What to Charge

In a lease agreement, determining a fair price is often the most important factor for both parties, yet it can be difficult to establish. Location, soil quality, the forces of supply and demand, your personal goals, and negotiations with your neighbor will all play roles in determining an appropriate price.

In some cases, you may not want to charge the farmer at all for farming your land. For example, if your goal is to keep the back pasture open, yet you don't want to pay someone to brushhog it, then inviting a farmer to take the hay off for free may make sense.

Most landowners would like to cover the property taxes on agricultural land with a rental fee, but this often does not make a realistic rental fee from the farmer's point-of-view. In fact, in some situations a landowner may need to pay some of the yearly maintenance costs, like liming and fertilizing, in order to attract a farmer to use his/her land, at least initially.

If you do plan to charge, most agreements are set up on per acre per year basis; that is, both parties agree up front on a price for the whole parcel based on a per acre charge for the year. In Vermont, land rents are extremely variable throughout the state. They can range from \$0-\$15/acre to \$50, even \$150/acre and higher for very good soils in certain locations for certain crops. Typically, land for vegetables is worth more than corn acreage, corn more than alfalfa, and alfalfa more than pasture and hayland. Sugarbushes are often rented by the tap at a range of 0-40 cents per tap and occasionally more.

Bartering may be an option to consider. Barter agreements are very common in Vermont. "Payment" for using the land could be anything from plowing your driveway in the winter to getting some mulch hay for your garden or even cheese or vegetables produced by the farmer. It comes down to being creative and communicating your goals with each other to come up with a payment on which you both can agree.

Considerations for Landowners

Whether you have 100 acres of hayland or 10 acres of riverbottom soils, there are additional questions, besides rental income, to consider when leasing your property. Here are just a few.

- Who is the farmer? What is their history, experience, and reputation?
- What will they grow? What farming methods will they be using?
- What chemicals will they use? When and how will they be applied?
- How far is the land from the home farm and what are their normal hours of operation? Who do you contact when you need to discuss the parcel?
- Also, what kind of a landowner are you? Will you be interested in knowing each and every detail about the farming operation?
- Where do you prefer the farmer to access the parcel? Will there be any times of the season or year when it will not be appropriate for the farmer to access and use the land? (For example, you may prefer that the farmer not spread manure the weekend of your daughter's wedding--it's your job to let the farmer know this, in advance!)
- What types of regular maintenance do you prefer and who handles that? For example, will you maintain the hedgerows or will the farmer?
- What about erosion protection--does the farmer have a plan in place to address erosion control?
- If animals are boarded on the property, what happens if they escape? Who is responsible for their capture and return? Who do you contact and how?
- Are there buildings on the parcel to be used by the farmer, i.e. for storing feed and/or manure? Do fencing and water systems exist? Who pays for installation and/or maintenance?

Getting information about the farming activities and understanding your own preferences and restrictions for the land are valuable for both you and the farmer--before you enter into an agreement!

Remember that farms are businesses and the land being used by the farmer is an integral part of that business. A hayfield that looks beautiful to you is feed

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for the farmer's livestock. The spreading of manure may seem unpleasant, but to the farmer it represents a low cost way to significantly increase the fertility of the soil. Recognizing the different values (aesthetic versus financial, etc.) that the land and its uses provide you and your neighboring farmer are important in establishing a successful relationship.

Liability. As a landowner, you should consider liability exposure. Any liability risk to you would likely be protected by your homeowner's insurance policy, but a call to your insurance agent to be sure is prudent. Also, make sure that the farmers who use your land carry liability insurance and workers' compensation coverage to protect yourself from any liability caused by the normal operations of the farm.

To some extent, Vermont law protects both landowners and tenants from exposure to liability for property damage or personal injury when the public is allowed free access to the property for recreational purposes. Only willful or wanton misconduct on the part of a landlord or tenant that causes injury will lead to liability.

Current Use (Land Use Value Taxation).

Vermont's Use Value Appraisal Program, also known as the "current use" program, enables farm and forest property to be taxed at its use value. The purpose of the program, which is administered through the Vermont Division of Property Valuation and Review, is to keep agricultural and forested lands in production and to slow the development of these lands. Enrolling your land in the current use program may be a primary incentive to work with a farmer over the long term.

To be eligible for the program, you must have 25 contiguous acres of farm land in active agricultural use or forestland under active management. Non-farming landowners are eligible if the land is used by a farmer as part of his/her farming operation under a written lease for at least three years. Forestland (which would include sugarbushes) must have a management plan approved by a county forester.

Because the program is meant to deter development, there are penalties imposed if you ever decide to subdivide or develop the land. The penalty, called a change in use tax, is equal to 10% of the full fair market value of the property as of the date the land becomes ineligible or is withdrawn from the program. The tax is assessed on any subsequent development and becomes a lien upon the land. So even though current use is a great way to reduce your property taxes and work with a farmer, there are long-term consequences--so consider this option carefully.

Considerations for Farmers

For farmers, the opportunity to lease or use someone's land can be extremely advantageous -- you can farm these often under-utilized parcels while avoiding the costs associated with land ownership.

When working with landowners, remember that for the most part, these folks may be well-meaning yet "farm-naïve"-- they may not realize that farming is a business and a way of life! Therefore, it is important for you to take the time to describe your farming operation and the work that will be performed on the land.

Curiosity does not necessarily mean nosiness--it's your job to explain how the land will be used. The following are issues to include in discussions with your neighbor.

- Explain your farm enterprise. Tell the landowner how your use of the land is part of your farming business.
- What noises and smells do you anticipate, and at what times of year? Remember, even though you're used to the sounds of the tractor and the smells of manure, this may not be the case with your neighbor--it may be a good idea to remind them how these fit into the overall benefits of your business and their soils.
- When are the best times for the landowner to contact you and vice versa? What happens in case of emergencies, i.e. the cows get out?

- Where will you enter the parcel and how often will you need to access the land? It's a good idea to decide on one or two points to access the land and stick to them.
- Are there any potential hazards related to using the land? For example, will you be using electric fences and/or chemicals? Will there be animals on the land?

If you are planning to use someone else's property, you need to carry liability insurance and workers' compensation to protect yourself from any trespass, damage or injury that may occur on that acreage. There is some liability protection for tenants and landowners when the public is allowed access to the property for recreational purposes but insurance makes great sense. If you have livestock--whether they are leased or owned--on the property be aware that you are responsible if they get out and do damage to a neighbor's property.

Also, you must follow Vermont's Accepted Agricultural Practices (AAPs). AAPs are statewide restrictions aimed to reduce agricultural non-point source pollution (chemicals, manure, etc.) into groundwater. Examples include the ban of spreading manure between December 15th and April 1st and the use of vegetative buffer strips to reduce streambank erosion.

Being honest about the realities of farming may initially alarm some landowners, but it's better for them

(and for you) to know the whole story up front, than to be surprised during the growing season. Also, remember that the hours you work are not typical for other occupations -- your work time may be your neighbor's leisure time. For example, if your plans include firing up the tractor at their parcel at 7:00 on a Saturday morning, it's a good idea to let the landowner know that, in advance! The point is the fewer surprises to the landowner the better, and on-going communication is key to a good working relationship.

Coming to Agreement

When both landowner and farmer are ready to make an agreement, you need to decide what type of lease you will use. In Vermont, three types of lease agreements are commonly used: the verbal agreement, a letter of agreement, and a written lease agreement.

At a minimum, all agreements should specify the name, address and contact information of each party; the date the lease was executed; the duration of the lease; a clear description of the property or facilities being leased and the purposes for which they may be used; the kind and amount of payment; time and place of payment; rights to extend or renew the lease; and how the lease may be terminated.

A Summary -- Types of Lease Agreements

| Type of Agreement | Brief Description | Advantages | Disadvantages |
|---------------------|---|---|--|
| Verbal Agreement | Also known as a handshake agreement, this is a verbal contract between two parties. | Easy to set up. | If either party backs out, agreement may be not enforceable |
| Letter of Agreement | Letter from farmer to landowner that describes the operation, plans for the land in question, and terms. | Written record, fairly quick and easy. | If signed by only one party, may not be enforceable against the other. |
| Lease Agreement | Formal description of the land, identity of parties & their signatures, terms and length of lease, any special provisions. Often witnessed, notarized and recorded. | Written record of exact terms and conditions agreed upon by both parties, effective against third parties, if recorded. | More costly for initial set up as attorneys should be involved. |

Verbal Agreement. Many acres of Vermont farmland are leased with the use of a verbal, “handshake” or “gentleman’s” agreement. They are very quick to put in place and in a majority of cases work extremely well for both parties. However, if you’re considering a verbal agreement, it is important to remember the adage, “a verbal agreement is as good as the paper it’s written on!” Obviously, no one plans for agreements to fail. However, many of the agreements that do indeed fail are caused by a lack of a clear and concise agreement. Because verbal agreements may not spell out the details (literally!) and often come down to “his word versus mine”, they are much more at risk for failure than other types of agreements--especially over the long-run.

...remember the adage “a verbal agreement is as good as the paper it’s written on!”

In fact, Vermont’s statute of frauds will bar the enforcement of any lease agreement unless it is in writing and is “signed by the party to be charged.” So if all you have is a handshake and the landowner decides not to rent to you after all, a court is unlikely to force him/her to honor your oral agreement. The statute of frauds also applies to oral amendments to a written agreement. So, if either party decides to change one of the important terms to your written lease, you need to get this in writing, too.

“Signed by the party to be charged” means that it must be signed by the person you want to hold to the agreement. If you send a letter to the landowner thanking him/her for agreeing to rent to you in the upcoming season, include all the important terms, and sign it, the landowner will be able to enforce your agreement in court. You will have no recourse against the landowner, however, unless he signs a copy of your letter and returns it to you. In rare instances, the courts have enforced an oral agreement involving transfers of

real estate where equity has demanded it - but don’t count on it.

The other hazard of an oral agreement is that at some point in the relationship, a dispute will arise and there will be nothing in writing to help you resolve it. And if you can’t work it out, a court could step in and resolve it for you. In Vermont, by statute, an oral lease conveys no more than a “tenancy at will” which means that it can be terminated at will by either party with minimal notice. The courts, however, have sometimes found that these tenancies can, over time, become tenancies from month to month, or from year to year, and will otherwise determine the rights and responsibilities of the parties. Operating under an oral agreement can leave you open to swift termination without recourse or to a court’s interpretation of your rights and responsibilities.

If you do choose to use a verbal agreement, be sure to communicate as clearly as possible the terms of the agreement.

Letter of Agreement. A letter of agreement is simply that--a letter from one of the parties, usually the farmer, which specifies the agreement. The letter is often acknowledged by the other party by their signature. The letter is typically written at the beginning of each growing season or year and explains the uses of the land for that season. Letters of agreement can be a relatively quick way to enter into an agreement and are generally a good way to keep in touch with your neighbor.

The risk involved with a letter of agreement is that it may be signed by only one party. If it is not signed by the party you want to hold to the agreement you will not be able to enforce it in court. The other risk is that it may not contain enough of the essential elements of your agreement. Your letter should be dated, contain the name, address and contact information of each party; the duration of the lease; a clear description of the property or facilities being leased and the purposes for which they may be used; the kind and amount of payment and time and place of payment; rights to extend or renew the lease; and how the lease may be terminated.

Lease Agreement. Should there even be a written agreement? For agreements longer than a year, definitely! Why? A signed, written lease agreement prevents misunderstanding among both parties. A good way to think of a lease is like the minutes of a meeting. It tells when you met, who was there, and what was decided. A lease leaves much less chance for misunderstanding and disagreements, and protects both parties should either die. If the income from this rental property is an important part of your farm cash flow, it is important enough to put it in writing. Many lenders, in fact, will require a written agreement.

Lease agreements are formal written documents, often drafted or reviewed by attorneys, witnessed and notarized. Leases for longer than one year should be recorded in the clerks office of the town where the farm lies, much like deeds. If not recorded and properly acknowledged, they bind only the tenant and the landowner and are of no effect against others who may have a subsequent claim to the land.

Leases have certain legal implications. When a landowner leases farmland, s/he, in essence, is giving up possession of the property for the lease term, but retains all the rights that are included in the lease agreement. For example, the lease may allow the landowner to access the property to inspect the land, make repairs, or collect rent but unless the agreement allows it the landowner cannot use the property for his/her own purposes without the permission from the tenant, even for hunting.

Leases can run for a single year or multiple years. Longer-term leases encourage stability and ongoing operation--the longer the lease term, the more likely the farmer will treat the land as his/her own and the better stewardship of the land. Vermont does not limit the term or length of agricultural leases. However, a transfer tax is imposed upon leases of 50 years or more, much like the transfer of title to real estate.

Elements of An Agreement

Whether you have a verbal agreement, a letter of agreement, or a formal lease, the following elements should be considered for an effective agreement.

Clear and Concise Language. It is important to be as clear and concise about the terms of the agreement as possible--that way there should be no disputes about what the agreement does and doesn't include. Begin by including the start date of the agreement, and the names of the landowner (aka "landlord" or "lessor") and the farmer (aka "tenant" or "lessee") with addresses and phone numbers for both.

Description of Property. Include the specific location of the parcel including the names of the road, town, county, and state. You can use the legal description on the deed to the property or a more informal description. Errors are more likely when the parcel to be rented is part of a farm or part of a field so

be particularly careful in those cases. A stranger should be able to read the description and know exactly what parcel you are referring to. Also include the total number of acres in the agreement--your local USDA office can offer aerial photos and/or size of parcels.

Terms. When does the agreement start and end, and what are the options for renewal? The term of the lease should be stated with written permission to review the lease and/or change the lease by either party. Spell out what should happen if the landowner sells the property while leasing it to the farmer--usually they need to give advance written notice to farmer to vacate the property.

Payment Schedule. What is the amount and type of payment? How often do payment transactions occur? The lease should specify a rent per acre or a total rent per year and can include a penalty if payment is late. The lease can also provide for goods or services provided by the tenant in lieu of rent – plowing the driveway, tilling the garden or a part of the tenant's crop.

A good way to think of a lease is like the minutes of a meeting. It tells when you met, who was there, and what was decided.

Rights and Obligations of Both Parties. This would include the right of entry by the landowner. The lease should specify purposes for which the landowner can enter the property and provide a minimum prior notice to the tenant. Some lease agreements contain “no right to sublease” and “lease is binding to heirs” clauses.

Land Use. How is the land to be used? Many leases specifically restrict the tenant to an agricultural use. You can also dictate a particular crop rotation or a detailed land use plan. Prohibited uses can also be listed, i.e., cutting timber or plowing pasture.

Expectations for Operation and Maintenance of the Land. Who takes care of maintenance, repairs and improvements on the land? For example, who pays for the fencing to be used by the farmer but stays with the property? Are any alterations allowed? In addition, any considerations of land fertility should be included here.

Termination Conditions. When does the lease expire and how must the tenant leave the property? How much notice will be required in order to terminate the lease and must it be in writing? Are any improvements necessary and who will pay for them?

Landlord Liens. Some leases include a lien on the tenant’s crop to secure the payment of rent. Neither Vermont statutes nor common law provide for an automatic landlord lien on the tenant’s crop in the event rent goes unpaid. Without a lien, the tenant’s crop is his/her personal property and the landowner has no right to seize the crop or other property of the tenant to sell or hold as security for unpaid rent. In the absence of a lien, the remedy for unpaid rent under Vermont law is to go to court for an “ejectment” and a judgment for the amount of rent in arrears.

Stewardship. You may want to include a provision requiring the tenant to farm in a “good and husbandlike manner” and/or require specific farm practices to protect the long-term productivity of the farm. Such provisions might include compliance with a government conservation plan, limits on the number of cuttings of alfalfa, and/or soil testing to inform the application of nitrogen or lime.

What If Things Aren’t Working Out

What happens if one or both parties are not happy with the agreement? This will depend upon the type of agreement you choose, and how willing you are to work it out.

All agreements should include a discussion about arbitrating differences--how are you going to handle potential disagreements. You may choose to discuss differences among yourselves or have a third party mediate. If the landowner or farmer is not doing what they agreed to, you will need to first discuss the situation and work out a solution. If you can’t seem to come to agreement, it may be wise to consult a mediator or an attorney.

Again, a thoughtful, thorough discussion before you enter an agreement may be the best way to avoid unpleasant disagreements.

For Continued Success

Once the agreement is put into place, don’t go away and forget about it. And don’t let the written lease expire. If the relationship continues beyond the term of the written lease, you’re operating under an oral agreement. Keep the lines of communication open. If you’ve forgotten some important details, like the location of your septic tank or leach field, communicate that with the farmer.

As a farmer, you may feel too busy to bother with the landowner once an agreement is set up. But try to keep in touch with your neighbor with a phone call, letter or personal visit. Show problems and successes. An end of the season letter that reports how the season went for you might be a nice way to keep in touch. All will help keep the landowner interested in your farm business and help build a long-term relationship.

And, remember, **you** are the key to keeping Vermont’s farmland open and productive. Your creativity and on-going communication with your neighbor will help you both work and enjoy the land together.

Resources

For information on linking with farmers and/or landowners in Windham County, please contact:
Windham County Natural Resources Conservation District
28 Vernon Street, #2, Brattleboro, VT 05302-8605
(802) 254-9766

For information on linking with farmers and/or landowners in other Vermont locations, please contact:
Land Link Vermont
University of Vermont Center for Sustainable Agriculture
590 Main Street, Burlington, VT 05405
(802) 656-0233
<http://www.uvm.edu/landlinkvt>

Additional Resources:

UVM Extension & Windham County Forester
157 Old Guilford Road, Brattleboro, VT 05301-3669
(802) 257-7967
<http://ctr.uvm.edu/ext/>

Vermont Farm Bureau
2083 East Main Street, Richmond, VT 05477
(802) 434-5646
<http://www.vtfb.org>

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