Finding Farmland

Important Questions to Ask Before Crafting A Lease Agreement

Here are some important things for farmers to think about when considering a rental agreement.

Are there any restrictions or easements that have been placed on the property that will affect its use? Rights of way, conservation easements that restrict development or other legal restrictions might be in place that will supersede the rights of the farmer in a lease agreement.

Is the property mortgaged or otherwise encumbered? Rights as a renter might be "subordinate" to the interests of banks or other entities that have a lien property. If a bank, for example, held a mortgage and decided to foreclose on the property, the bank might be able to terminate the lease unless the lease provided otherwise.

How will the cash rental rate be determined over the term of the lease? There are many ways to come up with a reasonable and agreeable rental rate. Ultimately the farmer must determine an appropriate rate that will allow the farmer to have a reasonable chance of making a profitable return. Some land owners do not see financial benefits as their goal in leasing, but others may want to recover some of the fixed costs of land ownership, such as taxes or infrastructure depreciation.

What are other feasible ways of compensating the land owner for use of the land? There are many alternatives to monthly or yearly cash payment. Consider:

- ***A Crop or Livestock Share:*** The land owner is given a share of the crops or livestock produced each season. The share can either be a predetermined equivalent cash value, or a "net share lease," where a percentage of the bounty is preset.
  Flexible Cash Rent: A hybrid between cash rents and share rents, where a base cash rate is set. When actual production exceeds that base rate, then the farmer pays the land owner an additional percentage share of the harvest.
- ***Services:*** A farmer can provide on and/or off farm services that can be of benefit to land owners, often more than enough to compensate for use of the farmland.

Where will I live? If housing is provided by the property owner, Vermont law regulates the rental residence and protects tenants in the same way it does for all types of residential tenancy, even if the housing is received as a benefit of farm employment. The premises must be safe, clean, and fit for human habitation. According to the statute, there must be adequate heat, hot and cold running water, and the dwelling must comply with applicable state housing and health regulations. If housing is not provided by the land owner, then other situations can be proposed. For example, the farmer can propose to finance the building of a small house, which can be sold back to the land owner upon termination of the lease. The initial lease agreement should specify the method used to determine the

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Find additional resources and tools for aspiring and beginning farmers at:

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house value and conditions specifying how ownership of initial buildings and future improvements can be transferred.

What about capital improvements? Over the course of a long-term lease, it is highly likely that you will need to add infrastructure to the property to grow the operation What kind of improvements will need to be made? Will they be removable or permanent? Who will pay for them? If the farmer pays for the improvement, will the farmer own the improvement? Beware! Under common law, any improvements attached to a property after the termination of a lease are considered forfeited by the tenant, unless the lease agreement has specified who owns the improvements and how the farmer can sell or sever them within a reasonable time. It is common for the farmer to bear the costs of removal and restoring the land to its previous condition.

Will my lease help with obtaining financing or other government cost share program? Often lenders and government cost-share programs will require lease agreements of a certain structure and length If capital improvements are being used as collateral, the lender will want to confirm through the lease agreement that the farmer is specified as the owner of such improvements and that the improvements can be foreclosed upon if need be.

Do I need insurance when I lease someone else's land? Land owners will not want to be held liable for accidents or losses that occur during the farmer's term of lease, and will often require that farmers show proof that they hold liability insurance The lease agreement itself might also specify that a failure to carry such coverage is grounds for nullification of the lease. It is usually prudent to have "double coverage" where both the land owner and the farmer hold liability insurance. The lease agreement should specify who is responsible for maintaining what type of insurance coverage and at what level. An insurance rider will need to be approved and assessed by the farmer's insurer for each property that is being leased. So, if the farmer is renting multiple parcels from multiple landowners, there will need to be a rider for each property.

As a farmer who does not own land, where will my retirement savings come from? Farmers who own land often rely on it for a major part of their "nest-egg" or retirement savings. Farmers who lease, however, do not have this option. If a beginning farmer decides to lease, it is recommended that a plan be in place to set aside savings for retirement. Sound farm business management incorporates family savings strategies from the start.

Farmland Leasing Resources

- *Land For Good*, a non-profit out of Keene, NH provides an excellent tutorial on Farm Leasing. It introduces you to the benefits and challenges of leasing, explains types of farm leases, and explains when to use them.
- *UVM Center for Sustainable Agriculture* published a "Lease Agreements Guide for Land Owners and Farmers," covering the basics of what should be included in effective farmland lease agreements.

The information in this bulletin was compiled by Ben Waterman, who served as land access coordinator for UVM Extension's Center for Sustainable Agriculture.