

This list includes many of the important sections of a farm lease, but it is not comprehensive, nor does it constitute legal advice. Please use this document as a guide and always consult with an attorney when negotiating a lease.

The parties. Be clear about the identities of the landlord and the tenant. Specify whether the party is an individual, LLC, corporation or some other entity.

Description of the property. The description should be sufficient to allow a stranger to identify the location of the property; include the address, a map and relevant specifics about the parcels being leased. Describing the initial condition of the property, including any structures, might make sense. Consider a separate lease agreement for a residence.

Duration of the lease. Specify start and end dates and options for extension or renewal. State whether the lease stays with the property if ownership transfers due to sale or settling an estate.

Rent. Specify payment (known as the “consideration”) even if it is no cost. In a non-cash agreement, state the type and frequency of services or the crop-share amount. Any penalties (e.g., interest) for a late payment should be specified as well.

Taxes. Specify responsibility for property and any other tax payments.

Utilities. Specify who is responsible for utility bills and what entity will be named on each utility account.

Permitted and prohibited uses. Define the permitted and prohibited uses of the property. What kinds of farming will be allowed? What counts as agriculture? A cordwood operation? Commercial composting? Corn maze? Aquaculture? Definitions and perceptions of farming evolve, so it’s important to be both clear and flexible. Address whether farm-related education or non-agricultural uses such as recreation will be permitted. A landowner may also prohibit certain activities, e.g., removing trees or gravel.

Landowners may want to specify limits to certain types of production, for example, only pasture or hay land, or set other restrictions or requirements about uses

appropriate to the soils or topography of the farm. Mapping where certain practices are allowed or prohibited is useful. Include a process for the tenant to request permission or clarification regarding uses. For example, the lease may say that removing trees is prohibited except as approved by the landowner in response to a written request by the tenant.

Entry. Specify whether the landowner has permission to enter the property and if there are limitations to such entry, such as requiring the landowner to give 24 hours’ notice before a visit or recreational use of the leased property by the landlord’s family members.

Maintenance and repairs. Specify who is responsible for maintaining and making repairs to the land and any structures included in the lease, such as fences, buildings, storage structures, roads and irrigation systems. Distinctions among maintenance, repairs and improvements should be defined clearly. Typically the tenant is responsible for basic maintenance and routine repairs. The landlord is usually responsible for major repairs, rehabilitation and replacement of farm structures or systems. Spell out a process for the parties to resolve related questions should they arise.

Alterations and improvements. Specify who is responsible for improvements such as new structures or major alterations, along with the process for approval, and who bears the cost. Specify whether such improvements are considered permanent fixtures and become the property of the landowner (compensating the tenant or not) or whether they may or must be removed by the tenant at the end of the term.

Stewardship and conservation. Specify what practices may be required or encouraged. Often it’s good to reference a separate stewardship or conservation plan as an attachment to the lease. The plan can be reviewed and revised annually. A lease may specifically encourage or require the development of a nutrient management plan, a waste management plan, or a grassland habitat management plan.

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Subletting. Specify whether subletting is permitted and under what conditions. Farm leases typically do not allow subletting without some controls by the landowner such as prior review and approval of the sublease terms and sub-tenant.

Termination. Indicate the conditions and procedure for either party to terminate the lease and if and when notice must be given. Tenants should strive for a clear and reasonable exit option. On longer-term leases, limit the ability of the landlord to terminate without just cause, otherwise the long-term nature of the lease is undermined.

Default. Specify what constitutes default—a violation of a term of the lease—by tenant or landowner failing to do something or doing something not permitted by the lease. Allow for the party to remedy the default and address

any damages resulting from the default, such as to pay the late rent or clean up a pile of trash.

Monitoring and reporting. Specify how monitoring will be handled, whether there will be reporting between the farmer and landowner and what form such reporting will take. There may be a schedule of monitoring visits. Someone familiar with farming should do the monitoring.

Insurance and liability. The tenant should carry liability insurance, typically indemnifying the landowner. The landowner may carry casualty insurance on the structures. Specify what will happen in the event the property is condemned or destroyed by fire or other casualty.

Dispute resolution. Include a dispute resolution process from a mutual commitment to engage in a facilitated conflict management process, to shared cost of formal mediation.

PROFILE

In 2003 Lars Kulleseid was looking for someone to farm the 500 acres he owned in Essex, New York. He met Mark and Kristin Kimball that fall.

After getting to know each other and discussing farm plans, Lars and the Kimballs signed their first lease: a 1-year contract that ran from November 2003 until November 2004. This was a chance to “test the water.” Today the Kimballs own 350 acres, multiple buildings and equipment. They continue to lease the remaining 150 acres and have an option to purchase more land.

The lease that Lars and the Kimballs drafted, modified over time and continue to use today incorporates the elements of a good farm lease, such as:

- **Describing the property and relevant details.** Lars was able to provide a detailed inventory of the farm’s natural history, biology, soils and agricultural potential, which he had received from the Open Space Institute before purchasing the property.
- **Clarifying financial, legal and management responsibilities.** Their lease includes descriptions of rent, taxes and liability; how the sales of any farm equipment will be divided; and specifies that Lars will pay for “mutually agreed upon capital expenditures” for farm improvements. It also clearly states that management responsibility resides with the Kimballs but that certain practices are expected, such as the exclusion of “non-organic pesticides, herbicides and fertilizers.”

- **Planning for the future.** Their lease includes the time frame, provisions for renewal, as well as for the sale/purchase of some of the land. It addresses what will happen should either party want to terminate the arrangement—including protections for both parties that are contingent upon who ends the arrangement.
- **Scheduling regular communication.** Their initial lease scheduled regular communication every other month as well as “at least once every quarter to discuss the operations and plans....” The current lease still includes a communication strategy but with less frequent meetings.

A farm lease isn’t the bedrock of a good relationship, but it is an important tool for clarifying and describing the relationship, including provisions for what will happen if the relationship ends. A good farm lease should be farm friendly and tailored to the needs and interests of all parties involved.



Essex Farm, Kristin Kimball photo